AN

HISTORICAL DEVELOPEMENT

OF THE PRESENT

POLITICAL CONSTITUTION

OF THE

GERMANIC EMPIRE.

VOLUME I.

AN

HISTORICAL DEVELOPEMENT

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POLITICAL CONSTITUTION

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GERMANIC EMPIRE.

By JOHN STEPHEN PÜTTER,

PRIVY COUNSELLOR OF JUSTICE, ORDINARY PROFESSOR OF LAWS IN THE UNIVERSITY OF GOTTINGEN, MEMBER OF THE ACADEMY OF SCIENCES AT BERLIN, &c.

TRANSLATED FROM THE GERMAN,

With NOTES, and a comparative View of the REVENUES, POPULATION, FORCES, &c. of the reſpective TERRITORIES, from the Statiſtical Tables lately publiſhed at BERLIN,

By JOSIAH DORNFORD, of LINCOLN's INN, LL.D.

OF THE UNIVERSITY OF GOTTINGEN, AND LATE OF TRINITY COLLEGE, OXFORD.

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THE

TRANSLATOR's

PREFACE.

THE English are accuſed, upon the Continent, and perhaps with ſome degree of juſtice, of viewing the forms of government of other nations with contempt. Dazzled by the ſuperior luſtre of our own, we are blind to the real beauties of other conſtitutions, and remain wilfully ignorant of the political bleſſings enjoyed by ſurrounding nations, from an idea, that as they do not reach, or are beyond the happy medium of the Engliſh government, the unfortunate ſubjects muſt either be the ſport of the caprice of tyrants, or a prey to the confuſions of democracy. On points where the glorious charter of Engliſh liberty is concerned, our enthuſiaſm renders us incapable of arguing. In converſation; we are too much intereſted in the particular parts of our admirable form of government, candidly to view the whole; and that we

are unable to write dispassionately on the subject, is sufficiently evinced by our leaving the valuable properties of the English constitution to be first developed by a Foreigner. The blessings of such a happy state are certainly more easily felt by a native, than described; and perhaps a dispassionate Member of a Swiss republic was the only man capable of considering the finished fabric in all its parts, measuring its proportions, viewing its extension and its height, and forming the just description with which the world has been lately favoured by the ingenious labours of De Lolme. The inhabitant of a massy building, though its walls may be superbly decorated, though he may feel that every possible convenience and luxury surround him, cannot judge of its exterior appearance; as many of the citizens of the metropolis itself, remain strangers to its wonderful extension, and the beauty of its structures, yet rest satisfied with the idea, that it is the first city in the world.

The indifference which Englishmen generally discover to a knowledge of the interior history and political regulations of foreign countries, is usually attributed to our national character. Though in other respects we are by no

means deficient in curiofity, and the world is indebted to the refearches of Britons for many of the firft improvements in fcience, yet it has been obferved by ftrangers, that we view furrounding political revolutions with a phlegmatic coolnefs, the very reverfe of that ardour by which we are otherwife diftinguifhed.

Our attention feems lately indeed to have been in fome degree awakened, by the violent commotions which have prevailed in France and in the Netherlands. In the former country we have feen a mighty Sovereign, born a ftranger to control, and accuftomed to fway the fceptre with abfolute authority over four and twenty millions devoted to their Monarch with an enthufiaftic loyalty, fuddenly deprived of the power to which his anceftors, for ages, boafted an hereditary claim, and reduced to the moft humiliating fubmiffion, not to fay led in triumph, by his fubjects. We have feen the fword wrefted from the hands of Defpotifm. The ftandard of Liberty has been boldly erected on the ruins of a fortrefs which was once a terror to the people; and while the patriotic Members of the National Affembly are labouring to eftablifh the common rights of citizens on a fubftantial bafis, there feems a poffibility that, like our firft parent,

 when

when he awoke from his ſleep, and diſcovered his fair partner, created from himſelf, we may be ſurpriſed to find in the French conſtitution, a figure formed from our own, which, if ſuch a ſuppoſition can exiſt, may even be more perfect, and more attractive.

The revolution in Brabant is of a very different nature. There a democratical zeal ſeems to have been made ſubſervient to the bigotry of the diſcontented Clergy, and the government changed merely from a monarchy to an ariſtocracy; while the people as yet continue equally ſuperſtitious and blind to their real intereſts, either as men, or as the citizens of one of the moſt populous and moſt fertile countries in Europe. This revolution will certainly be particularly intereſting to thoſe who ſtudy the following Hiſtory; becauſe the countries which have declared themſelves independent of the late unfortunate Emperor, may certainly be conſidered as connected with the Germanic Empire, as a part of the Circle of Burgundy, the treaty of union having never yet been publicly diſſolved.

It is acknowledged, upon the Continent, that we are not proud of any perſonal merit, acquired by genius or by induſtry, but of the

merely

merely casual circumstance of being born upon British soil. This consciousness of a worth annexed to an event so totally accidental, however disgusting to foreigners, may certainly be of infinite national utility, by encouraging every British individual to be zealous in his exertions for the protection of the grand bulwarks of his liberty: but in a philosophical point of view, this narrow disposition, for such it must be called, in an enlightened age, when all prejudices vanish before the torch of Truth, is far from being commendable, especially when entertained by men of education, and those who travel for improvement.

The sentiment expressed by Terence, "*Homo sum: humani nihil a me alienum puto*," does the highest honour to humanity, and may here be particularly applicable; for there is no species of knowledge which it is a disgrace to be acquainted with, and few things from which somewhat new may not be learned. The facts contained in the following pages, are of such a nature that it is rather a discredit not to have known, than a credit to know them. They relate to the political history of a people to whom we are indebted for our very existence, and even for many of those blessings which we boast of as peculiar to ourselves.

 When

When Hengiſt and Horſa defeated the ancient Britons, and the Saxons, Jutes, and Angles, allured by the ſucceſſes of their countrymen, eſtabliſhed their dominion upon the ruins of the authority of the Britiſh Druids, they introduced the cuſtoms prevalent in Germany. The Trial by Jury, at preſent one of the moſt valuable prerogatives of the Engliſh conſtitution, although the number might not be limited, nor ſubject to the oaths preſcribed, ſince the progreſs of refinement has introduced the practice of evaſion, and deſtroyed the confidence which our honeſt anceſtors, anxious only for the diſcovery of truth, repoſed in each other, is undoubtedly derived from the legal inſtitutions of Saxony. Among the ancient inhabitants of that country, and of almoſt all the northern nations, every member of the community was amenable for his conduct to a tribunal of his equals. The aſſembly was held in the open air. The wiſeſt and moſt experienced were elected to be Judges; and they paſſed ſentence according to the verdict of the people.* In proceſs of time, when the poſſeſſion of property acquired by the ſword occaſioned a diſtinction of rank, an adequate number was choſen from every claſs; which gave riſe to the cuſtom afterwards prevalent among the chiefs of the

Franks,

* Vide Möſer's Hiſtory of Oſnabruck. Berlin, 1780.

Franks, and long confiftent with the Germanic conftitution, of holding a Court of the Princes, and the particular courts of judicature ftill fubfifting among the peafants in feveral provinces of Germany; and thence probably arofe both the Trial by Peers in the Houfe of Lords, and the eftablifhed Juries, in England. The civil liberty, which was natural to the foil, and wild in the forefts of Germany, was tranfplanted, and has fince been foftered and matured in England.

Nor is this branch of our civil liberty the only bleffing for which we are indebted to the Germans. Religious liberty was equally a native of the Empire. Though Wickliffe had already expofed the errors of the Romifh church, it was in Germany that a genuine reformation firft dawned, and fpread from thence its genial influence.—The hiftory of its progrefs in an age overwhelmed with darknefs, when the fun of Truth rofe to its meridian height, gradually difpelling the mifts of ignorance and fuperftition, cannot be uninterefting.

The facts contained in the following pages, moreover, throw a confiderable light upon the Englifh hiftory in general. The pictures drawn

of the barbarities of the middle ages, are but too juſt deſcriptions of the manners once prevalent in Britain. The venerable caſtles which have bid defiance to the rapacious hand of time for ſo many centuries, and ſtill fill the mind of the approaching traveller with awe, were once the fortreſſes of independent Barons. Sheltered by their lofty battlements, they ſummoned their vaſſals to the field, and lived upon the ſpoil of their weaker neighbours.

The acknowledgements paid to the lords of different manors, the poſſeſſion of copyhold eſtates, &c. are illuſtrated by many of the provincial cuſtoms ſtill predominant in Germany. From them we may learn what the hardſhips of villanage were, which once oppreſſed our peaſants, and read, in perfect characters, what the refinement of modern times has happily eraſed, or left us but a faint idea of.

England is alſo particularly intereſted in the hiſtory of Germany, on account of the frequent connexion of our Kings, either by family or national alliance, with the Imperial families, and the houſes of other German Princes. This is in a peculiar manner the caſe at preſent; as the throne of the Britiſh realms is graced by the

the descendants of the illustrious Houses of Brunswick and of Mecklenburg, whose ancestors, for so many centuries, have contributed by the most glorious actions to adorn the page of history, and who still promise to transmit their virtues, through a numerous and amiable offspring, to succeeding ages, and gratify the fondest expectations both of Germany and Britain.

Englishmen who have travelled in Germany, frequently express a surprise at the backwardness of cultivation and modern improvements in agriculture, which, in comparison with England, it must be confessed, is sometimes too apparent in different parts of that extensive country. When we read the history of the civil wars of England, and the contest of the houses of York and Lancaster, when the fields of Towton were stained in one battle with the blood of more than five and thirty thousand men, and the cultivation of our fruitful Island retarded by intestine broils, we are no more affected than with the history of Marc Anthony and Cæsar,—because we are no longer sufferers.—But this is not the case in Germany. There the inhabitants still feel the direful effects of war. The faction of the Guelphs and Gibellines was not the

the only one which in former ages preyed upon the vitals of the diſtracted Empire. No country in Europe has been ſo much a ſtranger to the advantages of peace. Before the wounds occaſioned by one war were completely healed, they have been again torn open; and no ſooner has nature recovered her accuſtomed verdure, than the horrors of hoſtile devaſtation have again pervaded the land, and rendered the cultivated ſoil a deſolated wilderneſs. The huſbandman, who has reared his little cottage, and fenced his fields, promiſing himſelf an autumn of plenty and ſecurity, even in recent times has often been obliged to abandon all to the mercy of an enemy. When we recollect that Germany was once the theatre of civil war for thirty years, and that the bitterneſs of religious perſecution trampled upon every divine and human obligation; when the dictates of humanity were loſt in the fury of the warrior, cities conſumed to aſhes, whole provinces laid waſte; and, according to a late computation, upwards of eighteen millions of inhabitants loſt to their native country during that dreadful period, through the miſeries of war, ſickneſs, famine, and emigration; one cannot but admire the foſtering hand of Providence, which has again raiſed the Germanic Empire to its preſent flouriſhing

condition.

condition. Populous cities have arisen in the place of those devoured by the flames, the mountains are clothed again with vineyards, and the vallies abound with corn.

The arts and sciences, which sought protection in more peaceful regions, are again encouraged. The universities are crowded, and the seats of the professors occupied by men of learning and abilities. Within this present century, the Germans have united taste with erudition, and added the embellishments of classical literature to the abstruser study of philosophy. They have already produced a Leibnitz, and a Wolf. The labours of criticism are still assisted by the ingenious contributions of a Heyne, and the lovers of poetry charmed by the soft effusions of Wieland.*

Another

* The following authors, who, among many others equally respectable for their learning and abilities, are yet living, and continue to adorn their respective departments, and enjoy their merited reputation, as poets, historians, philosophers, divines, critics, or for their cultivation of the various branches of the sciences, sufficiently prove that Germany is not inferior in erudition, or literary taste, to any country of Europe.

Wieland, Klopstock, Bürger, Ramler, Göcking, Stollberg, Voss, Blumauer, Schiller, Engel, Iffland, Göther, Blum, Stephanie, Pfeffel. Schmidt, Spittler, Meiners, Müller,

Another circumſtance, which may have no ſmall tendency to recommend the work which I have attempted to tranſlate, is that it was originally written at the expreſs deſire of our moſt gracious QUEEN. Her Majeſty, anxious for the welfare of her native country, and deſiring to contribute whatever might have the ſmalleſt tendency towards it, expreſſed a wiſh to our Author, who has long worn the laurel as one of the moſt diſtinguiſhed public lawyers in Germany, that he would compoſe a book, " which might ſerve to convey a juſt idea of " the preſent conſtitution of Germany, in the " manner

Müller, Schlötzer, Möſer, Sprengel, Meuſel, Gatterer, Büſching, Buſch, Archenholtz, Plank, Boehmer, Hegewiſch, Häberlin, Fiſcher, Rudloff, Schröckh, Grellman. Herder, Zimmerman, Meiſner, Garve, Platner, Feder, Kant, Bibra, Dalberg, Hertſberg, Everhard, Brandes, Schloſſer, Iſelin, Zulzer, Heinſe, Moſer, Lavater, Ehlers, Eſchenburg, Lichtenberg, Jacobi, Schlegel, Meiſter, Hirſchfeld. Leſs, Kopping, Bahrdt, Formey. Heyne, Michaelis, Eichhorn, Schütz, Gmelin, Blumenbach, Kaeſtner, Forſter, Murray, Ingenhouſs, &c. &c.

And who is there in the literary world but reſpects the memory of Moſheim, Haller, Gellert, Leſſing, Mendelſohn, Jeruſalem, Winkelman, Mengs, Kleiſt, Gleim, Höltz, Geſner, Hagedorn, Abbt, Zollikofer, Sturtz, and Riſbeck, to whom I may juſtly add, though laſt, not leaſt, the immortal Frederick of Pruſſia?

" manner of a hiſtory; but at the ſame time " more with reſpect to the modern than pre-" ceding times." The Author was informed of Her Majeſty's deſire in May 1785. In the month of March of the following year, the preſent work was publiſhed. Her Majeſty was ſo ſatisfied herſelf, that ſhe condeſcended to teſtify her approbation of it in a letter to the Author. It was received with applauſe, by all the Proteſtants of Germany. The Catholics no doubt viewed with a jealous eye, a work which contradicts in ſo many inſtances the aſſertions of their firſt hiſtorians, and lays the axe to the root of thoſe principles which they have endeavoured with ſo much induſtry to propagate.

It now remains that the Tranſlator ſhould ſay one word on the part which he has taken in endeavouring to communicate ſo valuable a work to ſuch of his countrymen as are unacquainted with the German language. His firſt inducement to tranſlate it, was a wiſh to acquire a knowledge of the language, hiſtory, and political conſtitution, of Germany. The ſubject was highly intereſting; and he has been led on by one circumſtance and another to commit his labours to the preſs. Shielded by ſuch a name

as that of Britain's QUEEN, he ventures to produce his firſt performance.

A political work of ſuch a nature will not be expected to abound with many flowers of language. Facts ſimple and unadorned follow cloſely upon each other. I have endeavoured to adhere as much as poſſible to the original, though much allowance muſt be made for the different idioms of the languages. I have, however, this ſatisfaction, that the Author himſelf has been pleaſed to teſtify his approbation of the manuſcript, and I fear too flattering an expectation of its appearance in print. The notes which I have taken the liberty of adding, are either hiſtorical anecdotes, which I have preſumed might tend to illuſtrate the ſubject, or elſe explanatory of ſome peculiar technical terms, which, though the meaning of them is naturally become familiar to German, would be unintelligible to Engliſh readers.*

The difficulties to encounter when I firſt began, were many; but ſuch as might be overcome by induſtry, aided by advantages which few tranſlators are indulged with. A reſidence of

* The references to the notes of the Author are diſtinguiſhed by letters, from thoſe of the Tranſlator.

of two years in the Univerſity of Gottingen, in His Majeſty's Hanoverian dominions, where, by the great liberality of its gracious Patron, I had acceſs in common with the other ſtudents to a library conſiſting of an hundred and thirty thouſand volumes, any of which I had the privilege of enjoying the peruſal of in my own apartments, has enabled me to ſearch for the proper terms of law made uſe of by our moſt celebrated writers, and conſulting ſuch works in our own language as tended to elucidate the ſubject.*

I am not without hopes that this tranſlation will contribute ſomewhat to the information and amuſement of my countrymen. I do not remember to have ſeen any thing written already on the ſubject; and a work which has been ſo well received abroad, though its dreſs may be conſiderably altered, may reaſonably hope at leaſt for a candid reception in England.

I am

* Among theſe I muſt not neglect to mention, Robertſon's Hiſtory of Charles V, Nugent's Hiſtory of Vandalia; Maſcow's Hiſtory of the Germans, tranſlated by Lediard; Blackſtone's Commentaries; Stewart's View of Society, and Antiquities of the Engliſh Conſtitution; Millar's Hiſtorical View of the Engliſh Government; Anderſon on Commerce; Memoirs of the Houſe of Brunſwick, &c. &c.

I am conſcious of the many errors which uſually attend a juvenile performance, and which have ſome claim therefore to peculiar indulgence. I can make pretenſions to no merit but that of endeavouring to expreſs the ſenſe of my author, to the beſt of my abilities. Whether I have ſucceeded, or not, muſt be determined by the Public. I venture with diffidence to the bar of that awful Tribunal; and aſſure my Readers, that ſhould I now eſcape the ſeverities of criticiſm, my future labours ſhall be devoted to make ſome compenſation for the defects of this.

London,
March 10*th*, 1790.

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AN
HISTORICAL DEVELOPEMENT, &c.

BOOK I.

FROM THE EARLIEST TIMES, UNTIL THE DECLINE OF THE CARLOVINGIAN RACE, 888.

CHAP. I.

State of Germany from the earliest Times down to the Fifth Century.

Several nations independent of each other in Germany in the earlieſt times—Although all tribes of one principal people—After the third century, by degrees, in greater connexion with each other—Since the fifth century, people of two different extractions—Some originally Wendiſh, or Venedic, and others German—Remains of the forms of government of both at preſent.

AMONGST the various peculiarities which diſtinguiſh the Germanic Empire, in its political conſtitution, from all the other nations of Europe, one of the firſt is its being compoſed of ſeveral ſtates, which, when we conſider the difference of their ſituation, their extent, internal regulations, and condition

BOOK I.

dition in general, ſeem to have no relation to each other, at leaſt in no other reſpect than other European nations; yet, notwithſtanding this, together they always form an entire body, ſubject to a common head, under one ſuperior power. The origin of this very ſingular conſtitution may be traced in the moſt ancient hiſtory; for in the earlieſt ages Germany was inhabited by a variety of nations, which, although ſprung from the ſame origin, as ſeveral tribes from one principal people, had each of them their own regulations, and enjoyed the moſt perfect liberty and independence.

Anno ante C. 114.

The moſt credible accounts, for which we are indebted to the Greek and Roman hiſtorians, are as early as the hundred and fourteenth year before the birth of Chriſt, according to modern computation, when the attacks made upon the Romans by the *Cimbri*, and other nations of Germany, on the borders of Illyria, in the country now called Stiria, firſt made a further knowledge of thoſe people intereſting.

The Roman hiſtorians of that period mention the names of more than fifty Germanic nations, amongſt whom are ſome whoſe names are ſtill retained in thoſe very countries, as the *Treviri* in Treves, the *Rugi* in Rugen, and particularly the *Friſii*, who have hitherto retained their poſſeſſions and name, in the countries now called Eaſt and Weſt Frieſland, without alteration. The original ſettlements of ſome are pointed out, with a great degree of probability, by

by the ſimilitude of their names to rivers known at preſent; as the *Warini*, on the Warno, in the Dutchy of Mechlenburg; the *Foſi*, on the Fuſe, in the Biſhoprick of Hildeſheim; and *Chaſuari*, on the Haſe, in the Biſhopric of Oſnabruck. The ancient ſettlements of others may be diſcovered with more or leſs probability, as the accounts given by the Roman authors are authentic and credible; as the *Chatti*, in the preſent country of Heſſe; the *Cheruſci*, in the foreſt of the Hartz; the *Teucteri*, in the Dutchy of Berg; the *Bructeri*, on the rivers Lippe, Ems, and Roer; the *Chamavi*, in the county of Mark; &c.

We muſt not forget however, that when theſe names were in uſe amongſt the people of Germany, they wandered about, perhaps like herds, whoſe only objects were the chaſe and paſture, without even tilling the land, much leſs having fixed habitations in towns and villages. In theſe circumſtances ſuch nations were not attached to any certain ſpot or ſoil, as we conceive a country and people connected with each other now. When whole nations changed their ſettlements at once, it can ſcarcely be ſuppoſed poſſible to give any exact geographical deſcription of the Germanic nations, of thoſe ancient times, which may be depended upon: but this can be expected to have but little influence on our preſent ſtate, ſince the variety and diviſion of the countries, as we at preſent find them, cannot at leaſt immediately be derived from ſuch an early period.

We are to consider these various nations then, only as tribes derived from one principal people, or as different branches from one general stock. Pliny divides all the nations of Germany into five principal tribes; the Vindeli, amongst whom he reckons the Burgundi, Warini, Carini, and Guttones; the Ingavones, amongst whom were the Cimbri, Teutones, and Chauci; the Istavones, or Sicambri, who inhabited the more inland part of the country; the Hermiones, amongst whom were the Suevi, Hermunduri, Chatti, and Cherusci; and the Peucini, or Basternæ, on the borders of Dacia (*a*). Or, as Tacitus informs us, the various nations of Germany had four principal divisions; of which the real and original names were, the Marsi, Gambrivi, Suevi, and Vandali (*b*); amongst whom a late author imagines he has discovered traces of the origin of all the Germanic people in Saxony, Franconia, Swabia, & Bavaria (*c*)*.

After the Romans had driven the Cimbri and Teutones from their borders, and Ariovistus had met with a similar fate from Cæsar, and when the Romans extended the limits of their country from Gaul as far as

(*a*) Plin. Lib. IV. c. 27.

(*b*) Tacitus, de Morib. Germ. c. 2.

(*c*) Olenschlager's Illustration of the Golden Bull. Frankfort, 1766. Quarto. P. 43, Note 3.

* See Mascow's History of the ancient Germans, translated by Lediard,—London, 1738; where all the passages on this subject, in the Roman authors, are quoted at large.

as the Rhine, and from the Alps to the Danube, several of the Germanic nations became more closely connected; as they appear by degrees in the records and memorials of the third and fourth centuries, after the birth of Christ, under the names still known of Franks, Swabians or Alemans, Thuringians, and Saxons. CHAP. I. A.C. 30

Even amidst the astonishing migrations of the fifth century, when after the Alani were first in motion on the Danube and Black Sea, two of the Germanic nations, the Vandali and Suevi, wandered into Spain, and from thence passed over into Africa; when the Visigoths overpowered these again in Spain, and at the same time got possession of the southern part of France, from the Pyrenean mountains as far as the Loire; when the Burgundi, another German people from the Baltic sea, procured themselves a settlement on the Saone and Raone; when the Saxons were firmly established in England *; and lastly, when the Huns

* In the year 449, Vortigern, who had usurped the crown in Britain, first called the Saxons in, who were hovering about the coasts, to defend him against the Picts and Scots. The Saxons and Angles were originally different tribes; but at the time they landed in Britain they were so much incorporated, as to pass sometimes under one name, and sometimes under the other. Hence the compound name of Anglo-Saxons, given them by some authors.

Hengist and Horsa, according to Ethelward (Chron. Lib. I.), came from the original seat of the Angles, now Angeln, in Sleswic.

BOOK I. Huns themſelves, who were from the furtheſt borders of Aſia, and occaſioned the firſt emigrations there, came up the Danube, and paſſed the Rhine into the country of Champagne, but met with a repulſe at Chalons;—amidſt theſe great revolutions the Franks, Swabians, Thuringians, Saxons, and Friſians, preſerved themſelves in thoſe countries, where we find their original ſettlements deſcribed; as the Swabians or Alemans in the preſent country of Swabia, and on the upper part of the Rhine, as far as Mentz; and the Franks on the lower Rhine, and in the Netherlands.

In the countries deſerted by the Vandals, Burgundians, and other northern nations, on the Baltic ſea, and on the right ſhore of the Elbe, other Venedic and Sclavonic nations ſucceeded, from Pruſſia, Poland, and Ruſſia. Theſe occur ſince that period under different names; as the *Moravi*, in Moravia; *Ezechi*, in Bohemia; *Luſitzi*, in Luſatia; *Sorbi*, in Miſnia; *Hevelli* and *Ucri*, in the country of Brandenburg; *Obotriti*, *Kiſſini*, *Circipani*, *Wilzi*, *Velatabi*, *Tollenſi*, and *Rhedarii*, in Mechlenburg and Pomerania; *Polabi*, in Lauenburg; *Wagrii*, in Wagria, in Holſtein. Each of theſe nations had again their own peculiar conſtitution; yet all of them were ſo far of the ſame extraction, that they agreed both in their language and manners;—as even now the Bohemian, Poliſh, Ruſſian, and Sclavonic languages are ſo nearly allied, that they can only be conſi-

considered as different dialects of the same general tongue. CHAP. I.

One of the first sources then of our present constitution consists in this: that Germany, with respect to the origin of its first inhabitants, is to be divided into two different sorts of countries; the one, the inhabitants of which were not originally of German, but of Venedic extraction; as Mechlenburg, Pomerania, Wagria, Lauenburg, Brandenburg, Misnia, Lusatia, Bohemia, Moravia, and since the seventh century, Stiria, Carinthia, and Carniola:—the other sort of countries are such, whose inhabitants were originally Germans, as Lower Saxony, Franconia, Swabia, and the greatest part of Westphalia. This interior part of original Germany has this advantage over almost all the other countries of Europe; that no foreign nation has been able firmly to establish itself there for any length of time. The Romans could never establish their dominion on this side of the Rhine and Danube; nor have any other nations, though the country has been traversed by multitudes, who have all left traces behind them of their devastations, ever been able to make their conquests permanent (*a*).

Though the Venedic countries are at present, the greatest part of them at least, so much on the German footing,

(*a*) On this subject Monf. de Hartsberg the Prussian Minister's Treatise on the Superiority of the Germans over the Romans, is well worthy of perusal. Leipzig, 1780; p. 23.

BOOK I. footing, that, except in Bohemia and Lusatia, the Venedic language has been under the necessity of yielding to the German; yet there are traces sufficient left, both in the manners of the people, and in the constitution of the country, of their original distinction from other parts of Germany. In particular, it may be asserted upon good grounds, that from the time of the fifth century every land had its own Lord, its Prince, or King; and was reduced in succeeding years to acknowledge the supremacy of the Germanic empire, and its common head. So far therefore we may derive the first foundation of the present constitution from those times; as Mechlenburg, Pomerania, Misnia, Brandenburg, &c. were originally distinct countries, each of which had its own particular Regent, though afterwards made subject to the Empire.

With regard to these original Germanic nations, it is probable, that in the time of war they united against a common enemy, and followed a general leader, who commanded them in the capacity of Duke, HEERTOG *, Leader of the army; or as Prince, FURST, that is DER VORDERSTE, DER ERSTE, as it is still in English, THE FIRST; and in Dutch, DE VOORST; or else under the title of King;—and as soon as the war was at an end, this command ceased. In the time of peace,

* HEER, in the German language, signifies a Host or Army; and ZOG, or, in low German, TOG, the perfect of the verb ZIEHEN, the same as the Latin DUCO; from whence the word HERTZOG, or HEERTOG, a Duke.

peace, every tribe or canton * which inhabited a diſtrict of one or more quadrate miles, and was divided from the others by ſome determined boundary, either of mountains, rivers, or the horizon, where ſeveral free families lived in connexion together, became again totally independent. Even ſingle tribes or cantons could engage with each other in war; and in that caſe they choſe their own particular commanders.

Thus the Franks formed one principal Germanic people, though the Salii, Ripuarii, Cenomanni, and Morini, were different tribes of them. In the time of peace likewiſe each tribe could elect its own particular judge. For this office they generally made choice of a man of years and experience; who, to uſe a modern expreſſion, was grown grey in buſineſs, and was uſually called GRAU †, GRAVE, GRAVIO; from whence is derived the word GRAF, a Count.

From hence we might be led to imagine, that our titles of Duke, Prince, and Count, in the interior parts

* The German word GAU, here uſed, is called in Latin *pagus*, and ſignifies a tribe or canton, a ſubdiviſion of a province. In England, probably a hundred. Tac. de Mor. Ger. c. 12. Stewart's Antiquities of the Engliſh Conſtitution, p. 229.

According to Tacitus, each *pagus* furniſhed a hundred warriors for the ſervice of the community. "Definitur et numerus: centeni ex ſingulis pagis ſunt; idque ipſum inter ſuos vocantur, et quod primo numerus fuit jam nomen et honor eſt." Tac. de Mor. Ger. c. 6.

† The German word for *grey*; from whence probably the French and Engliſh words *grave*.

parts of Germany, derive their origin from the first centuries, as certainly the first etymological derivation of the words may be traced from a very early period; but this matter, and particularly the idea which we at present connect with the title of Dukes, Princes, and Counts, as actual sovereigns, will explain itself at a much later period.

CHAP.

CHAPTER. II.

State of that part of Germany which the Romans continued maſters of until the fifth century; and the influence that people evidently had upon the other nations.

Countries on the left ſhore of the Rhine, and on the right of the Danube, under Roman government—Towns, and other Roman inſtitutions in thoſe countries—Their remains, or memorials of them—Some degree of cultivation extended to the adjacent people of Germany—Particularly the Salic, Ripuarian, and other national laws, eſtabliſhed at that period.

THE countries ſituated on the left ſhore of the Rhine, and on the right of the Danube, which, if we reckon from the time of Julius and Auguſtus Cæſar, continued almoſt four hundred years under Roman government, were at that time fully eſtabliſhed on the Roman footing. A number of towns and caſtles were built, the ſituations of which may be ſufficiently aſcertained by the names at preſent known, or elſe by ſome other records of antiquity; as in the country contiguous to the Rhine, *Moguntiacum*, Mentz, *Auguſta Trevirorum*, Treves, *Colonia Agrippina*, Cologne, *Argentoratum*, Straſburg, *Saletio*, Seltz, *Tabernæ, Rhœnanæ*, Rheinzhabern, *Altaripa*,

BOOK I.

ripa, Altrip, *Bingium*, Bingen, *Veſalia*, Weſel, *Confluentia*, Coblenz, *Antennacum*, Andernach, *Noveſium*, Neus, &c. and in the neighbourhood of the Danube, *Auguſta Vindelicorum*, Augſburg, *Regina caſtra*, Regnſburg or Ratiſbon, *Batava caſtra*, Paſſau, *Celeia*, Cilley, *Lentia*, Lintz, *Laureacum*, Lorch, *Juvavia*, Salzburg, &c. but not one of theſe towns or caſtles has been preſerved, without alteration, in the form in which they then were, when they were firſt built by the Romans. They were deſtroyed almoſt without exception at the time of the migrations of the fifth century, and not rebuilt till a much later period.

We are by no means deficient however in ſuch remains and monuments of antiquity, as may ſerve to convince us of the flouriſhing ſtate of thoſe countries at the time of the Romans: though we poſſeſs no ſuch work which might afford us a perfect view of the antiquities remaining in thoſe countries, as has been publiſhed, with engravings, in England (*a*). A few ſingle accounts are extant, particularly of Mentz (*b*), Straſburg,

(*a*) Britannia Romana, or the Roman Antiquities of Britain, by John Horſley. London, 1732. Fol.

(*b*) Joſeph Fuch's Ancient Hiſtory of Mentz. Mentz, 1771; with 26 engravings. The author of this work was a learned Benedictine Friar. The Elector Emerich Joſeph defrayed the expence of printing it. It was to have conſiſted of four volumes, till the end of the ſeventh century; but was carried no further than the firſt,—from the building of the ancient fortreſs Moguntiacum, till the time of Trajan.

CHAP. II.

Strasburg(*a*), Treves(*b*), Salzburg(*c*), Augsburg(*d*), and a few other places. There are however some general memorials still remaining, which are of infinite utility; as amongst others a set of ancient Roman maps, or rather a description of roads, which was discovered by a learned German of the name of Conrad Celtes, at Augsburg, at the beginning of the sixteenth century. Conrad Celtes gave it to another learned man called Peutinger; from whom this collection got the name of Peutinger's Tables. At last it came into the hands of the celebrated Prince Eugene, of Savoy; and, with his books, to the Emperor's library at Vienna. In the year 1753 a certain Mr. de Scheib had it engraved, by the permission of the Empress Maria Theresia.

These

(*a*) Joh. Dan. Schoepflin *Alsatia illustrata*, Tom. I. Colmar, 1751; II. 1761. Fol.

(*b*) Nic. ab Hontheim *Historia Trevirensis Diplomatica*, Aug. Vind. et Herbip. 1750. Fol. and *Prodromus Historiæ Trevirensis*, 1757. Fol.

(*c*) Account of state of the country and city of Juvaria, before, during, and after the government of the Romans, till the arrival of Saint Rupert; and its change into the present city of Salzburg. Salzburg, 1784. A large folio, a third part of which consists of a diplomatic Appendix, containing a valuable collection of records. The learned Author has not given his name, though he has performed a great deal more than his title seems to promise.

(*d*) Paul de Stetten's History of the City of Augsburg. Frankfort and Leipzic. 1743. Quarto.

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These and other memorials inform us, that the Romans, when they founded a new city, usually sent six thousand veterans, soldiers who had been long in service, to build and people it; that in great cities they erected amphitheatres and founded baths, and other public institutions; that they made new high-ways and roads with incredible expence and labour; that they introduced the use of agriculture, the cultivation of gardens and vineyards, their arts, and their trade and commerce; that their legions were quartered throughout the country; that they established their courts of judicature, and other institutions of government, and brought into general use their coins, taxes, public entertainments, and religious worship. But, as I have before observed, the succeeding devastations have left but small traces of all this remaining.

It would have been very extraordinary indeed, if the people of Germany, who bordered on the countries possessed by the Romans, and amongst whom they afterwards got firm footing themselves, had not learned and adopted some of those institutions which were of general utility: and thus we find that the Franks, Alemans, Burgundians, and others, were taught by degrees the value of agriculture, the management of vineyards, the use of mills, the worth of writing, coinage, legislation, &c. Nothing can be a greater evidence of this than the Salic law* as it is called,
A. C. 422. which was made in the year 422 for the Salians, a part

* For the origin of the Salic law, vid. Abbé Velley's History of France.

part of the nation of the Franks. We are not to consider this in the light of ſuch a code as that of the Roman laws tranſmitted from the Emperor Juſtinian, or the modern code of Pruſſia. We meet with nothing here, but what might be expected from the legiſlation of a people in the infancy of cultivation,—as the firſt elements of juriſdiction,—and otherwiſe only penal laws, for the puniſhment of every kind of theft, perſonal injury, and offences of a public nature. One paſſage of the Salic law, on which the excluſion of daughters from ſucceſſion to the throne of France* was originally founded, and which continues in force to the preſent day, may in my opinion be conſidered as the moſt ancient proof of the principle ſtill prevailing among the high and inferior nobility of Germany, that the old family eſtates ſhould deſcend only to the male iſſue, and not to daughters. "With "reſpect to the Salic lands," ſays the law, "no part "of the inheritance ſhall deſcend to the female, but "belong wholly and ſolely to the male iſſue (*a*):" or, as the Ripuarian law, which was made for another tribe of the Franks, expreſſes it, "As long as any male "iſſue exiſts, no daughter ſhall inherit the family "eſtate (*b*)." Another ancient law of the ſame time, deſigned

* See Shakeſpear's Henry the Fifth, Act I. Scene 2.

(*a*) Lex Salica, tit. 62. § 6. in Georgiſch. Corp. Jur. Germ. p. 124. "De terra Salica nulla portio hæreditatis mulieri veniat, "ſed ad virilem ſexum tota terræ hæreditas pertineat."

(*b*) Lex Ripuariorum, tit. 56. § 4. Ap. Georgiſch. L. c. p. 167. "Quum virilis ſexus exſtiterit, fœmina in hæreditatem aviaticam "non ſuccedat."

BOOK I.

designed for the *Warini*, on the Warno, in the Dutchy of Mechlenburg, expresses itself in still plainer terms: "The paternal estate shall be inherited only by sons, "and not by daughters. If a father leaves only "daughters, and no son, the next relation of the male "line shall inherit the family estates, and the daugh-"ters shall only inherit the personal effects (*a*)." This is certainly a valuable record of antiquity, and so evidently correspondent with the usages of the present day, that though a Princess, for instance, of Baden or Bavaria, so long as any of her brothers live, can have nothing but her settled dowry; yet as soon as the male issue of her line is extinct, and the country itself and people fall to the Prince of Baden Durlach, or Elector Palatine, as the nearest relations of the male line, all the allodial property must fall of course in that case to the Princess Elizabeth of Baden, or the Dowager Electress of Saxony, as sister to the Elector of Bavaria.

(*a*) Lex Angliorum et Warinorum, tit. 6. § 1. (ap. Georgisch. L. c. p. 448.) "Hæreditatem defuncti filius, non filia suscipiat. "Si filium non habuit, qui defunctus est, ad filiam pecunia et man-"cipia, terra vero ad proximum paternæ generationis consangui-"neum pertineat."

CHAP.

[library stamp]

CHAPTER III.

Ancient history of the Christian Religion in the countries contiguous to the Rhine and Danube.

Religious opinions of the ancient Germans—The Christian religion spread, by means of the Roman legions, on the Rhine and Danube—State of Christianity when it was established under Constantine the Great—First appearance of the Hierarchy, in the precedency granted to the Bishops and Assemblies of the Church—The opinions then prevailing, respecting the unity of the Church, and heresy.

WHAT the opinions of our ancestors were about a future state, and their dependence upon one or more superior beings; in short, what the religion of the ancient Germans was, according to my present purpose, I may leave to the enquiry of others. From this no influence can be derived on our present state; except from the circumstance that even the ancient Germans held their Priests in the greatest reverence; for Tacitus assures us, that the Germans suffered themselves to be bound and beaten, and silence to be imposed upon them, by none but their Priests, as if by divine authority (*a*).

(*a*) Cæterum neque animadvertere, neque vincire, neque verberare quidem, nisi Sacerdotibus permissum: non quasi in pœnam, nec ducis

BOOK I.

That the Chriſtian religion in the firſt ages, when it was ſtill at a diſtance from the throne, and rather ſuffered, at different times, the moſt dreadful perſecution, was ſpread by the Roman colonies and legions as far as the Rhine and Danube; and that, during the reign of Conſtantine the Great, after his converſion, there were Chriſtian communities in the cities on the Rhine and Danube, are facts not to be diſputed. The attempt however to connect the liſt of the firſt Archbiſhops and Biſhops of the ſees at preſent eſtabliſhed in thoſe countries, with the time of the Apoſtles, and continue them uninterruptedly from the time of Conſtantine, can only ariſe from the fictions of the tenth century; in which the enlightened writers among the Catholics themſelves no longer place any degree of credit(*a*). There are a few circumſtances, however, in the ſtate of religion of the firſt centuries, without which the eccleſiaſtical conſtitution of the ſubſequent periods, and in ſome meaſure of the preſent day, cannot be made intelligible.

Although at the time of Chriſt and his Apoſtles the words BISCHOF, AELTESTER or Preſbyter, from whence the contracted German word PRIESTER is derived,

ducis juſſu, ſed velut Deo imperante, quem adeſſe bellantibus credunt. Tacitus, de M. G. c. 7.

Silentium per Sacerdotes, quibus tum et coercendi jus eſt. Tacitus, de M. G. c. 11.

(*a*) Hontheim, Hiſt. Trevir. Diplom. Tom. I. Diſſ. Prælim. Hanſitz, Germania Sacra, Tom. I. p. 17.

derived, teacher and inspector of a church, were considered as equivalent, and only distinguished from the Deacons or Ministers, who were to perform the public service; yet, at the time when Christianity first came into Germany, it was customary for every considerable city where there were several Christian communities, both in the town itself, and in the country, who had their particular Priests, to have a Bishop, with whose dignity a certain precedency was soon connected, which arose from the relation in which the High Priest, according to the government of the church in the Old Testament, stood with respect to the Jewish Priests and Levites.

As it frequently happened that several Bishops, in the same country, were in correspondence with each other, or held a general consultation on matters which were interesting to the community at large; as even at the times of persecution the Christians had reason to keep together, and support each other as well by their counsel as actions; so, before the time of Constantine, principally in the eastern part of his dominions, it was usual for several Bishops to meet at different times, and hold a consultation on the common concerns of their churches, or Assemblies of the Church, as they were called, (synods, or councils) sometimes of an extensive, and sometimes a narrower district.

Constantine had scarcely made confession of the Christian religion, before such assemblies of the church

 were

BOOK I. A.C. 314, 325.

were publicly countenanced. An aſſembly of this kind was held, in the year 314, at Arles, in Provence, and in 325 at Nicæa; and both of theſe were frequented by the Biſhops of the countries of the Rhine and Danube. We may trace the various effects of theſe inſtitutions from thoſe times; and their influence has evidently operated in the ſucceeding ages, and in ſome meaſure even to the preſent day.

To theſe aſſemblies none were admitted but the Biſhops; and in the decrees they made, the churches willingly acquieſced. The decrees came afterwards of themſelves in uſe, as obligatory rules. Appeal was made to the example mentioned in the 15th chapter of the Acts of the Apoſtles, where a meeting occurs of the Apoſtles and the Elders, in whoſe places the Biſhops imagined they ſucceeded: but they forgot that this very decree was not made by the Apoſtles and Elders alone, but approved of by the Church in general (Acts, xv, 22), and in the name of the Apoſtles, Elders, and Brethren (Acts, xv, 23). The Biſhops began now to attribute the force of an obligatory law to their decrees; not only with reſpect to their own ſubordinate Prieſts and Miniſters, but all the members of the community; in ſhort, the church in general. The Biſhops jointly conſidered themſelves as the repreſentatives of the whole church. Others, who were neither Biſhops nor Miniſters, were obliged to be ſatisfied with what was publicly declared a decree of the Aſſembly. Thus aroſe the great diſtinction between the ſpiritual and temporal eſtates, as they were called; or more conciſely, the

Prieſt-

Priesthood and Laity: so that, in affairs which concerned religion and the church, the Laity had no further concern, but, when the Clergy thought proper to ordain any thing, reserved to themselves only the honour of obeying. From hence it followed, that the Laity were always removed further from the knowledge of things; and the Clergy, on the contrary, monopolized whatever had the appearance of learning, and enforced their principles with the hope or loss of eternal salvation. Thus it may be conceived, how the spiritual estate was soon enabled to acquire such an ascendency over the temporal, that the equilibrium so necessary to the perfection and welfare of every commonwealth, with respect to the temporal estate, was irrecoverably lost.

Another consequence attending the institution of the church assemblies, related to the different degrees of ecclesiastical rank. Not only the common Priests and other Ministers were considered as subordinate to the Bishops; but when several Bishops of the same country met, they regulated the Assembly and their rank according to the political division of the provinces; so that Bishops who belonged to one province, when they found it necessary to hold a particular provincial synod, yielded in precedency and rank to that Bishop whose see was in the capital city of the country. Thus, according to the new division of the Roman empire made by Constantine the Great, Treves was the capital or metropolis of *Provincia Belgica prima*; and the Præses of this province as

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well as the Vicar of the diocefs of the whole of Gaul, refided there, though the other cities, Metz, Toul, and Verdun, belonged to the fame province. According to this political divifion, the Bifhop likewife who had the fee of Treves acquired the precedency and rank over the Bifhops of Metz, Tull, and Verdun, who were obliged to refpect him as their Metropolitan, or, as he was afterwards called, Archbifhop. And even to the prefent day thofe Bifhops continue fuffragans to the Archbifhop of Treves. In the fame manner, according to this divifion of Conftantine's, Mentz was the metropolis of Strafburg, Spire, and Worms, and Cologne of Liege. Above the dignity of Metropolitan, or Archbifhop, arofe that of a Primate of every nation, and Patriarch for each quarter of the world; as the Bifhops of Antioch, Alexandria, and Rome; though the Papal dignity, in the fenfe we now underftand it, was not at that time thought of.

A third confequence which this inftitution had, which is now the fubject of enquiry, was its connexion with the very fingular idea then entertained of the neceffary unity of the Church. One might have thought it fufficient for the unity of the Chriftian Religion, to confift in every Chriftian's adopting all the contents of the Bible as the rule of his faith and conduct, and with faith in Jefus Chrift, as the Son of God, and Saviour of the world, and the hope grounded thereon of eternal falvation; fhowing himfelf active in the love of God, and of his neighbour; as the Jewifh religion diftinguifhes itfelf from other religions,

religions, by adopting only the Old Teſtament and Talmud, and the Mahometan the Coran, as their ground of faith; without expecting, that in the preſent ſtate of human nature ſo many people, nay the number even who adhere to one religion, ſhould be of the ſame opinion on all the queſtions which might poſſibly ariſe on all religious ſubjects, or agree in the interpretation of particular texts of Scripture, which after all perhaps are not very eaſy to explain. But, far from conſidering this, they believed that if they made confeſſion of a religion, they muſt be agreed, without exception, on all the various points of it. Thus they explained the exhortation of the Apoſtle Paul to the Epheſians, "to keep the unity of the "ſpirit in the bond of peace; one body and one ſpi-"rit, even as ye are called in one hope of your call-"ing; one Lord, ONE FAITH, one Baptiſm, one God "and Father of us all;" &c. Eph. iv, 3—6. With this they connected the expreſſion of St. Peter, that "out of the name of Jeſus Chriſt of Nazareth there is "no ſalvation, and no other name given among "men, whereby we muſt be ſaved." Acts, iv. 10, 12. But this expreſſion of St. Peter they confounded with the principle, that out of the Chriſtian church there could be no ſalvation. They began now too to determine on the deciſions to be made by the Chriſtian church on innumerable points of controverſy; and when theſe were once reſolved in an aſſembly of the church, he alone was to participate the hope of Chriſtian ſalvation, who adopted them. The decrees of the Council therefore were eſteemed of equal value with

CHAP. III.

BOOK I. the expreffions of the Bible, and declared to be the infpiration of the Holy Ghoft. If any one did not agree to or acknowledge them, he was excluded from the church as a heretic: or if feveral churches, or their reprefentatives, adopted different decifions, the queftion now became, which church had the moft genuine faith? Thus divifions naturally took place; one party condemned and perfecuted the other whenever they could. Our admirable religion was conftantly in danger of being more deformed; and in this ftate, already fo wide from its original purity, it came firft into Germany.

CHAPTER IV.

Origin and first progress of the Frankish Monarchy.

Erection of the Frankish Monarchy by the conquests of Clovis, in Gaul—Its extension, in Germany, over Thuringia, Rhenish and East France—Clovis embraces Christianity—His victory over the Visigoths—Accepts the title of Patrician—Extirpation of the other Frankish Kings—Progress of the Monarchy, and its extension under the first descendants of Clovis—In what relation Bavaria stood to the Frankish Monarchy—Quality of the Dukes and Counts—First appearance of the feudal tenure—Service of the Bishops and secular Nobility at Court—The Court not stationary—Ecclesiastical Councils, and Diet of the Empire—Succession to the throne.

BY the emigrations of the fifth century, not only the greatest part of Gaul, or France, as a part of the empire of the Visigoths, which extended over Spain and the kingdom of Burgundy, were peopled by foreign nations; but Odoacer, in the year 476, had even put an end to the Roman empire.* In Italy Odoacer however was attacked himself again in 489, and in 493 conquered by Theodoric, the King of the Ostrogoths. From this period a powerful Ostrogothic empire commenced in Italy; so that the Court of the Grecian Emperors, which still continued at Constantinople, considered it as an usurpation.

In

* See Gibbon's Decline and Fall of the Roman Empire, Chap. 38.

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In this situation of things, till the year 486 there was still a Roman governor called Syagrius at Soissons; but it was long to be foreseen that this remnant of Roman Gaul could not be long preserved on its former footing. When the Alemanni from Swabia penetrated into Alsace and Lorraine, and the Franks, under the command of Childeric, a son of Meroveus, had penetrated deep into the Netherlands, it became highly probable that one of these two nations would rob the Romans of their spoil.

A. C. 486. In the year 486 Clovis, the son of Childeric, unexpectedly ventured to take the command of a part of the nation of the Franks. His first undertaking was an expedition against the Romans, whom he defeated in the neighbourhood of Soissons. From this time he took possession of that part of Gaul which the Visigoths and Burgundians had left to the Romans, as a conquest acquired by his sword. This was the foundation of a new monarchy; which after his decease was inherited by his sons and posterity, and has continued to the present day, only divided between the two crowns of France and Germany.

The original limits of this new monarchy established by the Franks, comprehended in the beginning partly that district of France which formed the remainder of Roman Gaul, and partly those countries which Clovis, and that part of the nation of the Franks which was subject to him, were in possession of, in Germany and in the Netherlands. But these borders, by the succesful enter-

enterprises of Clovis and his sons, were extended so far as to include the whole of the present country of France, and a considerable part of Germany. CHAP. IV.

The first enterprise which Clovis himself was engaged in, after having in some measure confirmed his conquests in Gaul, was in the year 489, against the Thuringians. A. C. 489. This people, when the Franks advanced into Gaul, probably thought, from the example of former emigrations, that the countries where the Franks were before settled in Germany, were rendered vacant; and that the Thuringians, who had only to proceed, might take possession of them: but Clovis presently taught them otherwise, and drove them back to their former borders. Hermanfried, King of Thuringia, married afterwards, in the year 500, a niece of Theodoric, the powerful King of the Ostrogoths, whose protection restrained the Franks from any further enterprise against him. But in 529, when Theodoric died, and left only a grandson, who was a minor, the sons of Clovis attacked the Thuringians again, and, after an obstinate engagement fought on the river Unstrut, reduced them entirely to subjection. At this time the Saxons were in alliance with the Franks, and attacked the Thuringians with them. A part of northern Thuringia, which extended as far as Magdeburg and Helmstadt, by this event was added to Saxony; and the remaining part of Thuringia, which came under the Frankish supremacy, has ever since preserved its name, though in a much narrower district.

The

BOOK I.

The ſecond war which Clovis was himſelf engaged in, was againſt the Alemanni. This people, jealous no doubt of the conqueſts which the Franks continued to make in Gaul, made hoſtile incurſions in the territory of the Ripuarii, a particular tribe of the Franks, who had a different king from Clovis. That Prince however proceeded againſt them with all his force;
A.C. 496. and, by a deciſive victory gained in 496, at Zulpich, in the Dutchy of Juliers, confirmed the newly-eſtabliſhed monarchy. He immediately took from them Alſace, and the countries of Spire, Worms, and Mentz, where they had eſtabliſhed themſelves. From this country adjoining the Rhine, he formed a particular Frankiſh province, which was diſtinguiſhed by the name of Weſt or Rheniſh France, *Francia Occidentalis*, *Francia Rhenana*, from the other provinces of the Franks in Germany (*a*). He carried a colony of Franks likewiſe over the Maine, by Frankfort, at the back of the Alemanni; from which ford of the Franks that town received its name. This was diſtinguiſhed from the province of Weſt France, by the name of Eaſt France, *Francia Orientalis*; and afterwards only kept the name of Franken, or Franconia; whereas the preſent circle of Franconia is properly compoſed of Thuringian and Alemannian territories. The remains of the original Alemannia, or, as it has ſince

(*a*) This country has lately been placed in its true light, by Chriſtopher Jacob Kremer's Hiſtory of the Frankiſh Dominions on the Rhine; publiſhed by Andr. Lamey. Manheim, 1778. Quarto.

ſince more frequently been called, Swabia, but reduced to a much narrower compaſs, was governed now as a ſingle Dukedom, under the Frankiſh ſovereignty. CHAP. IV.

The victory which Clovis gained over the Alemanni at Zulpich, was the firſt occaſion of his liſtening to the perſuaſion of Clotilda, his ſecond wife, who was a Burgundian Princeſs, and a convert to Chriſtianity, and in the ſame year, 496, embracing the Chriſtian religion himſelf. As he was a member of the orthodox church, which moſt of the inhabitants of France acknowledged, inſtead of which the Viſigothic and Burgundian Kings were Arians, this contributed not a little, in the opinion of the clergy and the people, to confirm Clovis in his new conqueſts, and even in a conſiderable manner to extend them. Remigius, the Archbiſhop of Rheims, who had baptized and anointed Clovis, wrote to him, in the year 570, that "he ſhould reverence his prieſts, and have "recourſe to their good advice; that if he was on "amicable terms with them, all his affairs would "proſper. (*a*)" Juſt at this period Clovis made an attack upon the Viſigoths; and in order that the war might meet with the approbation of his people, he urged, as his principal reaſon, that they were Arians. The moſt ancient hiſtorian of the Franks introduces Clovis, A. C. 507.

(*a*) "Sacerdotibus tuis honorem debebis deferre, et ad eorum "conſilia ſemper recurrere. Quod ſi tibi bene cum illis conve- "nerit, provincia tua melius poteſt conſtare." Nic. Coleti *Concilia,* Tom. V. p. 539.

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Clovis, ſpeaking on this occaſion in the following terms: "I cannot endure," ſaid he, "that theſe "Arians ſhould poſſeſs ſo conſiderable a part of Gaul; "let us go forth, with God's aſſiſtance, and reduce "their country to ſubjection (*a*)." This ſpeech, continues the hiſtorian, gave general ſatisfaction; in conſequence of which the King marched, with his army, immediately to Poictiers. Here, in the year 507, he gained a victory over the Viſigoths, commanded by their king Alaric, who was himſelf killed in the field; and thereby extended his empire, by the addition of Auvergne, Aquitain, and the city of Toulouſe; the Viſigoths reſerving only a part of Narbonne, or the preſent province of Languedoc.

The victory over the Viſigoths procured Clovis the honour that Anaſtaſius, who was then Emperor at Conſtantinople, ſought his friendſhip, in order to ſecure his aſſiſtance againſt the Oſtrogoths, in Italy. Anaſtaſius offered him, by an expreſs embaſſy, the title of Patrician, which Clovis accepted, and, after a ſolemn proceſſion on horſeback to the church, was there inveſted with the robes. It cannot now be preciſely determined, what this dignity at that time was. Perhaps it was ſomewhat ſimilar to the orders of knighthood with which great Princes now often compliment each other. It may, however, have had ſome

(*a*) Gregor. Turon. Lib. II. cap. 37. Chlodovæus rex ait ſuis: "Valde moleſte fero quod hi Ariani partem teneant Gal- "liarum. Eamus cum Dei adjutorio, et ſuperatis redigamus "terram in ditionem noſtram." Quumque placuiſſet omnibus hic ſermo, jam commotu exercitu Pictaviam dirigit.

ſome diſtant relation to what the dignity of a Roman Patrician ſignifies, as it occurs two hundred years later *. A figure in ſtone, of Clovis in his Patrician habit, is ſtill to be ſeen in the porch of the Abbey of St. Germain, in the ſuburbs of that name at Paris.

The laſt ſtep by which Clovis completed his newly-erected kingdom did but little honour to his heart. As he was originally only a chieftain of one of the tribes of the Franks, there were probably relations of his, who were kings or chieftains of other tribes; as of the Ripuarii, at Cologne; the Cenomanni, at Cambray; &c. Theſe he took every poſſible means to deſtroy; not only that his new conqueſts, but that all the original territories of the Franks, and therefore the whole of the Frankiſh empire, might be ſolely in the poſſeſſion of him and his poſterity. The Biſhop of Tours, to whom we are indebted for the moſt ancient hiſtory of the Franks, writes, with a vaſt deal of indifference, "that Clovis, "by the murder of many other Princes, of whom, as "they were his relations, he had entertained ſome "jealouſy that they might take the kingdom from "him or his ſucceſſors, extended his dominions over "the whole of Gaul. (*a*)"

The

* An. 754, Pepin was made Roman Patrician by Pope Stephen II. See Chap. VI.

(*a*) Greg. Tur. Lib. II. cap. 32. "Interfectiſque et aliis "multis regibus, et parentibus ſuis, de quibus zelum habebat, "ne ei regnum auferrent, regnum per totas Gallias dilatavit."

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A. C. 534. As long as Clovis lived, the kingdom of Burgundy continued firm; but in the year 534 his fons made war upon it, and reduced it to fubjection.

The country now called Provence belonged at this period to the Oftrogothic kingdom, in Italy, which was then apprehenfive of an attack from the Grecian Emperor. In order to make the Kings of the Franks his friends, or at leaft that they might not be his enemies, Vitiges, the King of the Oftrogoths, in the A. C. 536. year 536, not only gave up Provence to the Kings of the Franks, but the country of Rhœtia likewife, which he poffeffed in Germany.

Thus the full extent of the Frankifh monarchy, both in France and Germany, was formed during the reigns of Clovis and his fons, as it at firft continued under the whole reigning family of the Merovingian race; although various divifions were made amongft feveral brothers; as the prefent countries of France and Germany in particular, were often diftinguifhed from each other by the names of Neuftria and Auftria.

The hiftory of a confiderable part of Germany now called Bavaria, with regard to its connexions with the Franks at this period, remains in the greateft darknefs. No doubt the ancient Roman *Noricum* included the prefent country of Bavaria; and at the revolution, when the Oftrogoths became mafters of Italy, it came under the dominion of the Oftrogothic King. But at what time the Bavarians firft came into the country;

country; of what extraction those people originally were; when they began to have their own Dukes; in what relation those Dukes stood to the Ostrogothic Kings; and how they first became subject to the Franks; are questions which are variously answered by modern authors, but for the most part only by conjecture. But some few conclusions may be drawn from thence, which will not be wholly unimportant in the following history, and in some respects even in the present day. CHAP. IV.

According to the general opinion which has hitherto prevailed, Bavaria must have become subject to the Franks before the year 534; as a code of Frankish Alemannian and Bavarian laws appears, by its preface, to have been drawn up by Theodoric, King of the Franks, who died in 536. Some late authors pretend however that this preface was written a hundred years later, and that it has confounded, by mistake, the Ostrogothic and Frankish Kings, who had both the name of Theodoric (*a*). According to this last remark, the Bavarians first threw off the Ostrogothic yoke in 554, under their Duke Garibald the First, and submitted, in the year 628, to Dagobert the First, King of the Franks, on the condition of preserving many of their liberties (*b*). A. C. 628.

Others

(*a*) Buat, *Histoire Ancienne*, Tom. XII. p. 97.

(*b*) Joh. Ge. de Lori's Chronological Abstract of the History of Bavaria. Munich, 1782. p. 66, 78, 108.

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Others think it not improbable that the *Norici* and *Rhætii*, as Oftrogothic fubjects, at the time when the Thuringians were at war with the Franks, confidered themfelves as joint allies of the King of Thuringia, but after the defeat of the Thuringians fuffered a fimilar fate; and that they were then obliged to fubmit to the Frankifh fovereignty; efpecially as a contemporary author mentions a victory gained over two feparate nations, one of which was certainly the Thuringians, and the other therefore might probably be the Bavarians (*a*).

This however is certain, that from the earlieft period of the Frankifh monarchy, every country which before formed a feparate nation, had its own particular Duke, whom the King confidered as chieftain over the people, and who, in time of war, commanded the whole army of the country. There was of courfe a diftinction between thofe countries which fubmitted unconditionally, and fuch as yielded to the Frankifh fceptre upon certain terms. It is probable therefore that one Duke might have had more power than another, and that in fome countries the title might have been hereditary; whereas in general every Duke was appointed as a chieftain, during the King's pleafure, dependent on the Crown. From this period, if no revolution had intervened, we might certainly derive the foundation of the prefent fingular conftitution of the Germanic Empire, divided, as it now is, into fo many countries, each

(*a*) Account of Juvavia, p. 90.

each of which has its own particular Lord: but the sequel of this history shows that quite other revolutions have taken place with respect to the Germanic Dukedoms, and contributed to establish the constitution in its present form.

With respect to the Counts who were at that time appointed in every district, or canton, as royal officers to administer justice, and superintend the King's revenues, there is still less doubt that they had any pretensions to what we now call territorial sovereignty.

From this period however we may certainly derive the origin of the feudal system, which has since had so much influence on the constitution of every State in Europe. As the Germanic nations were formerly accustomed to divide the countries which they conquered, or else distribute them by lot amongst those whose bravery had helped to acquire them, yet the possession of such estates was connected with a further obligation to serve in a national war; so we may suppose that Clovis and his successors distributed a number of lands and estates, which had fallen to their share in the division of the conquests, amongst brave and respectable men, on the express condition that they should not only serve in the wars of the nation, but defend the person of their king with particular fidelity. Such grants as these indeed were not yet hereditary, but only for life, and liable to be resumed, and afterwards underwent a variety of changes and new regulations. They certainly however laid the foundation

 of

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of the cuſtom of certain members of the nation holding their eſtates of the King, upon condition of being more immediately attached to him as his people, liege men, or vaſſals; whilſt other eſtates, on the contrary, were free, or, as they are termed, allodial property.

After the converſion of Clovis, not only the Biſhopricks which were formerly eſtabliſhed were revived, but ſuch Biſhops as were able to read and write, ſoon became indiſpenſable for the tranſaction of the buſineſs of the Court and nation; and for this reaſon they were appointed Chaplains at the Court, and even Referendaries and Chancellors.

Only ſuch as were properly denominated Court offices were reſerved for the Laity; as King's Marſhal, to ſuperintend the horſes; Chamberlain, to inſpect the wardrobe and its appurtenances; Steward, with the care of the kitchen; Butler, to look after the cellars; Maſter of the Hunt, &c. When any of theſe were men of experience, and appeared to deſerve the royal confidence, it is probable that the King called for their advice; and ſo far it might be ſaid that the Frankiſh Kings employed the officers of their Court, as the Steward, Chamberlain, &c. in the concerns of the empire, or affairs of ſtate (*a*); and that the Grand Steward of the Houſehold, or Major-domo, repreſented what we now call a Miniſter of State.

In

(*a*) ALBERICUS Monarchus trium Fontium, ad an. 696.

In thofe early times, as well as throughout the middle ages, the Court was not ftationary, but wandered, almoft annually, from one part of the country to another. The greateft part of the time the Kings retired to their own domains or villas, where the conveniencies for hunting and fifhing, as well as riding, fwimming, and other exercifes, rendered their abode agreeable. On the principal holidays, fuch as Chriftmas, Eafter, and Whitfuntide, or days that were fet apart for particular folemnities, they returned to the cities, where they attended the ceremonies of religious worfhip, and kept their public Court days, or Galas. On fuch occafions as thefe, the moft eminent perfons, both fpiritual and fecular, of the whole empire, or at leaft from the adjacent country, thought it an honour to wait upon their King, and pay their court to him. On this account we feldom find the royal Deeds executed, for any length of time, in one particular place; but fometimes in one, and fometimes another part of the kingdom. This however did not prevent any particular city from being confidered as the capital of the Empire, or of any particular part of it, according to the divifions which were then made. Thus Clovis had already made Paris his capital; and fome time afterwards Metz appears as the capital of Auftrafia. Other divifions which the Kings made were called after Orleans, Soiffons, or other towns, which were diftinguifhed by being made their chief places of refidence.

BOOK I.

Clovis, in the year 511, which was the laſt of his life, ſummoned the Frankiſh Biſhops to a Council at Orleans; a cuſtom which was afterwards often repeated. There is as little doubt likewiſe that the Kings of the Franks occaſionally conſulted the Dukes, Counts, and other Nobility, in the affairs of the empire. Very early traces are to be met with, of a ſort of national aſſembly being held at the beginning of each year; but our ideas of theſe muſt not by any means be formed from the Diets, and limited power of the Emperor, with reſpect to the States at preſent. A nation that was free, and only diſpoſed to war, as that of which the Frankiſh Kings were ſovereigns, could not be deſpotically dealt with. Policy itſelf would naturally point out the neceſſity of conſulting the moſt diſtinguiſhed perſons in matters of importance; although it could not be conſidered as abſolutely neceſſary for the King to have the conſent of the States, and that without this conſent he had not the privilege of acting in the affairs of government according to his own pleaſure.

One of the moſt important queſtions with reſpect to the original political conſtitution of the Franks, related to the ſucceſſion to the throne. It might naturally be expected from the nature of a kingdom eſtabliſhed by the ſword, that the firſt conqueror who had any ſons would render the throne hereditary. The ſequel informs us, that ſeveral brothers divided the empire amongſt each other. There ſeems at that time

to

to have been no idea of the indivisibility of a State, or of the succession to a throne according to the right of primogeniture, usually connected with it. And the reunion of the monarchy which occasionally happened after such frequent partitions, could only be attributed to deaths with default of issue.

CHAPTER V.

Decline and Fall of the Merovingian Race.

The decline of the Merovingian race, firſt occaſioned by their diviſions and internal cabals—During theſe, Italy becomes a Greek province, but recovered by the Lombards—The ſecond cauſe of the decline, the minority of ſome of the Kings, and predominating power of the Major-domos—Riſe of Pepin of Herſtall and Charles Martel—Political protection of the Miſſionaries, particularly of Boniface—The ſtate of the religious doctrines at that period, of purgatory, good works, &c. and the eccleſiaſtical government—Firſt negociation concerning the dignity of Roman Patrician—Total fall of the Merovingian race, and acceſſion of Pepin, ſurnamed the Little, to the throne.

THE frequent partition of the country amongſt the grandſons of Clovis, was ſoon productive of pernicious quarrels and civil wars, which aroſe during his reign, and that of his ſucceſſors, and during which, aſſaſſinations, murders, poiſonings, and other unheard-of cruelties, ſtain this part of the hiſtory. Upwards of an hundred years elapſed without the occurrence of any new conqueſt, extenſion of the empire, or any other glorious action of the royal Merovingian race. The only circumſtances which diſtinguiſh the hiſtory of thoſe times, are, the final deſtruction of the Oſtrogothic empire in
A. C. 564. Italy, by Conſtantinople, in 564; and the foundation being laid of Italy's becoming a province again united

united to the Eaſtern Empire, and governed by a Grecian Exarch. A few years after this conqueſt was accompliſhed, the Lombards, who were originally a Germanic nation, but had been for a long time ſettled in Pannonia, broke in again upon Italy, and in the year 568 got firm footing in the upper and middle part of the country. This new kingdom of Lombardy exiſted, from this period, for two hundred years; though neither the city of Ravenna, where the Grecian Exarch reſided, the city of Rome, or the lower part of Italy, could ever be reduced to its ſubjection.

A revolution of a very different nature at laſt gave new life to the hiſtory of the Franks. The minority of the ſons and ſucceſſors of Dagobert the Firſt, had at that time ſo much increaſed the riſing authority of the Major-domos, that one of them attempted, in the year 656, to diſpoſſeſs the Merovingian family of the throne:—an attempt which, though at that time unſucceſsful, had this conſequence, that the nephew of that Major-domo, Pepin of Herſtall, had afterwards the ſame ſcheme in agitation; which at laſt, under him, his ſon, and grandſon, came to perfect maturity.

After a variety of deaths which in a ſhort time ſucceeded each other in the royal family, one Major-domo attempted in Neuſtria, and another in Auſtraſia, to procure the whole monarchy, ſometimes for one Prince, and ſometimes for another, according to the ſervice he was himſelf employed in. This was the occaſion

BOOK I. occasion of a bloody war between Pepin of Herstall, who was Major-domo in Austrasia, and those who, during his life, successively held that office in Neustria. At last Pepin gained a decisive victory, in the A.C. 687. year 687, at Testri, in Vermandois.

It is true that from this time the title of King was always left to a Prince of the Merovingian race, without any further partition of the kingdom, or any vacancy happening, so that another might claim the throne, without being fixed upon by the Major-domo. Notwithstanding this, Pepin of Herstall bore the whole weight of the government, and had already assumed the title of Duke and Prince of the Franks, *Dux & Princeps Francorum*; and thus likewise after his death, his son Charles Martel, who, in 737, on the death of Theodoric the Fourth, who was then King, put an end to the lineal succession, and no longer left so much as the name of King to any of the Merovingian Princes.

All this would indeed scarcely be conceivable, if both Pepin and Charles Martel had not been particularly favoured, as well by the fortune of war, as by some particular circumstances, which they knew how to make the greatest political advantage of.

The fortune of war not only decided in favour of Pepin of Herstall, at the battle of Testri, but favoured him likewise in the expeditions which he made, in

in 689 and 695, againſt the Friſians (*a*), and in 709 and 712 againſt a Duke of Alemannia whom he found in rebellion. Charles Martel principally immortalized his name, by an unqueſtionable ſervice which he did both to France and Germany, in the year 732, by defeating the Saracens at Tours, who ſince 714 had been maſters of Spain, and driving them beyond the Pyrenæan mountains. His merit was ſo much the greater, as the whole nation muſt have been ſenſibly convinced that they were indebted to this Prince alone for their delivery, and the continued exerciſe of their religion; whilſt their King was wholly devoted to luxury and inactivity, and, inſtead of placing himſelf at the head of his army, or taking the helm in public buſineſs, was ſcarcely ever ſeen by his people.

CHAP. V.
A. C. 712.

Another circumſtance now occurred, which placed Pepin's family in a very advantageous light with regard to religion. Notwithſtanding the ſucceſs of Chriſtianity in France, there were ſtill many cities on the Rhine and Danube where there had formerly been Chriſtian Biſhops, but, owing to the devaſtations of the fifth century, were now in ruins. The interior parts of Germany were ſtill ſtrangers to the Chriſtian religion; but Providence ſeemed to have deſigned other means for its introduction into this country, than from France, or from the Danube.

Already

(*a*) In conſequence of an engagement in 734, in which the Friſian Duke Poppo himſelf was killed, the whole of Frieſland was reduced, by Charles Martel, and made ſubject to the Franks.

BOOK I.

Already, at the end of the ſixth century, Biſhop Gregory of Rome had obſerved with aſtoniſhment that no meaſures were adopted by France to propagate Chriſtianity in England. This occaſioned a miſſion of forty of the Clergy being immediately ſent to England from Rome; where, by the aſſiſtance of the Queen *, who had already embraced the faith, Chriſtianity was ſoon eſtabliſhed. From this ſeminary aroſe other miſſionaries, who ventured out of England and Ireland into Germany, to inform thoſe who were yet ignorant, of the doctrines of the Goſpel. Many of theſe miſſionaries were countenanced by Pepin of Herſtal (*a*); but the moſt aſſiduous was an Engliſhman, of the name of Winifried, or Boniface, who, under the protection of Charles Martel, endeavoured to eſtabliſh the Chriſtian religion in Thuringia, Franconia, Swabia, and Bavaria. In the year 738 he
A.C. 738. completed the foundation of the Biſhopricks of Salzburg, Ratiſbon, Freiſingen, and Paſſau, and afterwards of Wurtſburg and Eichſtadt. In the year 744 he founded the Abbey of Fulda, as a ſeminary for able Biſhops in future; and at laſt, in 745, fixed upon Mentz as his conſtant reſidence, which has ever ſince

* Bertha, the only daughter of Caribert, King of Paris, one of the deſcendants of Clovis, and married to Ethelbert, King of Kent. Hume's Hiſtory of England, Vol. I. p. 31.

(*a*) Columban and Gallus, in Swabia; Killian, who died, in 687, in Franconia; Emeran, who died in 625, and Ruprecht, or Robert, in 718, in Bavaria; Wilibrod, who died in 739, in Frieſland.

ſince continued the ſee of the firſt Archbiſhoprick in Germany.

Juſt at the time that Boniface was making his firſt exertions in Germany, the Biſhops Gregory the Second and Third were at variance with the Court of Conſtantinople, about ſome alterations which the Emperor Leo Iſaurus had ordered to be made, reſpecting the images in the churches. It was particularly agreeable to him therefore, that Boniface paid a viſit himſelf to Rome, and laid the ground for a cloſer connexion of the new foundations in Germany with the Roman, which they were naturally obliged to conſider as their mother church. Boniface therefore took the ſame oath which it was uſual for thoſe Biſhops alone to ſwear who were ſubordinate to the Roman dioceſs. The force of this oath was afterwards ſo much increaſed, and at laſt it was ſo univerſally adminiſtered, that even now all the Biſhops in the Catholic communion bind themſelves, by means of it, to the moſt abſolute ſubjection to the Pope's authority.

In ſuch circumſtances was the Chriſtian religion introduced into Germany, under the direction of the Roman Biſhops, and tending to their advantage, as well as that of the eccleſiaſtical eſtate in general. Gregory the Firſt, or, as his flatterers call him, the Great, had already ſpread the doctrine of Purgatory; a doctrine which was for this reaſon of greater conſequence, as an idea was adopted with it, that God might be moved to ſhorten the duration of the

BOOK I.

the ſufferings of departed ſouls in a mediate ſtate between Heaven and Hell, by the interceſſion of the living, and ſtill more of ſuch Saints who were alrready in a ſtate of bliſs. With this ſuppoſition they naturally did every thing to aſſure themſelves of the friendſhip of ſuch Saints, and particularly of the mother of Chriſt, and his Apoſtles. They thought that by their near connexion with the Deity, they could ſee into the mirror of his divine omniſcience, and that nothing could be concealed from them, which thoſe who were ſtill living were doing for their advantage. Hence aroſe the invocation, as it is called, of Saints; hence the variety of churches built in honour of the Saints, and called after their names; hence the vowing of gifts and legacies; and laſtly, the Maſſes for ſouls, conſidered as profitable in proportion to the number ordered—at leaſt for thoſe who are paid to perform them.

The Maſs too was in many reſpects already introduced, by Gregory the Firſt, upon the plan at preſent uſed in the Catholic churches, with all the variety of Latin forms, chanting, and other ceremonials, and conſidered as the only eſſential part of religious worſhip. It was already a cuſtom likewiſe to require of thoſe who penitentially confeſſed their ſins, to do public penance, or read a certain number of pſalms, repeat prayers, diſtribute alms, obſerve faſts, go on pilgrimages, or perform other ſuch imaginary meritorious works, to which they attributed ſuch a degree of worth, as to aſſure themſelves of the forgiveneſs

of

of their ſins. Under the name of alms, however, were underſtood gifts or legacies to the clergy, or churches, and pious foundations. CHAP. I.

The objects of pious foundations were particularly increaſed by the prevalence of a monaſtic life. Benedict of Nurſia, who died in the year 544, firſt endeavoured to promote this, by laying down rules for the proportionate diviſion of time in the cloiſters, between the practice of religious duties, manual labour, and the inſtruction of youth. Theſe rules, from which the Benedictine Order derives its name, were ſtrongly recommended by Gregory the Firſt. From that period Benedictine abbeys became conſtantly more numerous in the kingdom of the Franks; and, at a Council held in 742, a law was enacted, by which all monks and nuns were enjoined to ſubmit to thoſe regulations. A.C. 742.

Thus we may conceive, how the churches and other pious foundations obtained very early a profuſion of wealth and eſtates, by the generoſity of Sovereigns, and other perſons of diſtinction. This might, even at that time, occaſion a degree of jealouſy on the part of the ſupreme power of the State, of the aſcendancy of the Clergy, which it had too much reaſon to dread; eſpecially as ſince the time of Conſtantine the ground had been laid, not only for the Clergy and their eſtates enjoying an exemption, in many reſpects, from the common burthens incident to every civil ſociety, but the Biſhops firſt became arbiters

BOOK I.

arbiters in matters of diſpute, and ſoon afterwards exerciſed a ſort of ſpiritual juriſdiction in differences referred to their deciſion as legal judges.

Notwithſtanding this, the Archbiſhops and Biſhops ſtill continued real ſubjects of the Sovereigns of their reſpective nations. The Roman Biſhop himſelf ſubmitted to the ſupreme power which governed at Rome, and was even in danger of being ſupplanted in the precedency he had hitherto enjoyed by the Biſhop of Conſtantinople. Yet here again Biſhop Gregory the Firſt, who has already been ſo often mentioned, by oppoſing the claim of the Biſhop of Conſtantinople to the title of Univerſal Biſhop, had the merit of obtaining for the ſee of Rome, which was the ancient ſeat of the Emperors, the precedency likewiſe over the Biſhops of the new-eſtabliſhed Reſidence. From that time every thing tended to produce a ſchiſm of the Greek and Latin churches, which afterwards more and more increaſed; and from that time to the preſent day, they have never been united. But in the Latin church every circumſtance became by degrees ſo favourable to the Roman Biſhop, that he continually acquired higher prerogatives over all the other Biſhops of the Weſtern Empire.

Amongſt other things it frequently happened, that the Biſhops of Rome were applied to by thoſe of France, England, and other Weſtern countries, for their advice, and even deciſion, in matters of con-

troverſy.

troverſy. Theſe opinions and deciſions were ſoon afterwards collected, and joined with ſimilar collections of the decrees of the Church, and their contents conſidered of the ſame importance as the Bible. Hence the Chriſtian religion, as it was conducted in Germany, might well be expected to deviate daily from its original purity; at leaſt the Clergy, when any innovation promiſed them advantage, had it now almoſt wholly in their power, by new ordinances, to increaſe the number of precepts to be obſerved, both in faith and conduct, at pleaſure.

To return to Charles Martel again,—we may now more eaſily conceive, that in his ſituation it was policy to keep on good terms with the Clergy in general, and particularly with the Biſhop of Rome. He had good reaſon therefore for ſupporting a Boniface in the eſtabliſhment of the churches with the greater zeal, that he might make the nation forget their former royal family, in his own united character of Hero and Promoter of Religion. On the other ſide, the Roman Chair was in need of ſuch a hero as Charles, partly for ſecurity againſt the Grecian Court, and partly againſt the Lombards. With this view Charles Martel was offered the title of Roman Patrician; probably with the idea that he might in a manner undertake the protection of the city of Rome, and the Catholic Church. But this buſineſs went no further than the treaty, as he perhaps did not think it prudent to form any alliance, which might oblige him to lead an army acroſs the Alps.

BOOK I.

In general it ſeems that the death of Charles Martel retarded the accompliſhment of his ſcheme of raiſing his family to the throne. His two ſons, Carloman and Pepin, did not however omit to continue the title of Regent, as if it was hereditary; but divided the kingdom like an inheritance between them. This excited the diſpleaſure of many of the moſt diſtinguiſhed perſons of the nation, the Clergy not excepted, who were not wholly ſatisfied with many of Charles's meaſures, in which he had not been ſufficiently ſparing of the eccleſiaſtical eſtates. The two brothers, moved by theſe circumſtances, ſuffered Childeric the Third, a Merovingian Prince, again to take the title of King. They were themſelves more zealous than ever to obtain the favour of the Clergy, as at this period ſome remarkable Councils were held in the Church; and Boniface himſelf performed his laſt grand works, by founding the Abbey of Fulda in 744, A. C. 745. and in 745 in fixing upon Mentz as his metropolitan ſee. Fortunately for Pepin, his elder brother, Carloman, retired to a monaſtery, and Pepin now ſoon found ways and means of accompliſhing the end which he had had ſo long in view.

The greateſt difficulty which now preſented itſelf was, that the nation had done homage to the King, and therefore might have ſome ſcruples in their conſcience of deſerting him. In matters of conſcience it was uſual for Boniface to ſend to Rome for advice. On this account two Prelates, a German and a Frenchman, Biſhop Burchard, of Wurtzburg, and Fulrad, Abbot

Abbot of St. Denis, were dispatched to Rome, to propose the question to Pope Zacharias, "Whether "it was not right and equitable, that he who actu-"ally conducted the government of a nation, and "to whom the people were indebted for their pre-"servation and their welfare, should have the royal "title conferred on him; or whether it should be "left to him who, though he had hitherto only "enjoyed the name, had never possessed the "power?" CHAP. V.

The plan was no doubt previously laid, that this embassy should return just as a National Assembly was held, in the year 752, at Soissons. Here the Papal sentence, which corresponded with Pepin's wish, was publickly declared; and, as David was formerly anointed by the Prophet Samuel in the place of Saul, so Boniface, in the presence of the other Bishops, crowned and anointed Pepin in the room of Childeric, who, with his sons, was shut up in a monastery. Thus was this great revolution accomplished, and a flourishing royal race compelled to yield the throne to the family of their Minister, without any further change in the political constitution, except that the honourable office of a Major-domo, or the title of a Duke and Prince of the Franks, of course no longer existed. A.C. 752.

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CHAPTER VI.

The Carlovingian race in its flourishing state, particularly Charlemagne.

Hiſtory of Pepin after his acceſſion to the throne—Particularly his being made Roman Patrician, and his preſent to the Holy See—Charlemagne—His conqueſt of the kingdom of Lombardy—Commencement of the Saxon war—Extenſion of the borders of his empire beyond the Pyrenean mountains—Wars and regulations on this ſide the Elbe—Emigrations and political revolutions in Bavaria—Attempt to unite the Rhine and Danube—Revival of the title of Roman Emperor—Its legal effect—Concluſion of the Saxon war, and conditions of peace—Origin of the preſent Biſhopricks in Weſtphalia and Lower Saxony—Expeditions in Bohemia—War with the Normans—The river Eider the boundary of the Empire—Capitulars, and other good inſtitutions of Charlemagne, particularly reſpecting the Church—New Archbiſhoprick at Salzburg—Appointment of perpetual Commiſſaries.

SCARCELY had Pepin aſcended the throne, before an opportunity offered of rendering an eſſential ſervice in return to the Pontificate. Aiſtulph, the King of the Lombards, had juſt at this period made himſelf maſter of the Exarchy of Ravenna, and impoſed a poll-tax on the Romans. In order to procure aſſiſtance againſt him, Pope Stephen the Second, in the

the year 754, made a perſonal viſit to Pepin at St. Denis's, anointed and crowned him again, and prevailed upon him not only to accept the title of Roman Patrician, but to undertake two ſucceſſive campaigns againſt Aiſtulph. The event of this war was, that Aiſtulph left the Romans in tranquillity, and gave up the Exarchy of Ravenna to Pepin, who made a preſent of it to the Church of Rome. Thus the patrimony of Peter, which before conſiſted only of a few ſingle eſtates and a ſmall revenue, firſt acquired thoſe dominions to which we uſually give the name now of the Eccleſiaſtical Territory. Conſtantine the Sixth, who was then Emperor of the Greeks, demanded the reſtoration of the Exarchy from Pepin; but he received for anſwer, that "Pepin had "not undertaken the war to pleaſe the Greeks, but "St. Peter, in order to obtain thereby the forgiveneſs "of his ſins."

CHAP. VI. A.C. 754

The kingdom of the Franks itſelf was not wholly free from commotion. Many of the principal people thought it a hardſhip to obey a King whom but lately they had conſidered as their equal, and whoſe extraction was not to be compared with their own. But here again the fortune of war decided in favour of Pepin, and he reduced the Dutchies of Swabia and Bavaria, as well as Aquitain, to obedience. That the nation might have no time for reflection at a time when otherwiſe every thing was quiet, he made an attack upon the Saxons, who, excepting that part of the country which was inhabited by the Venedic nations, were the

BOOK I. the only people in Germany who had not ſubmitted to the Frankiſh government. In this attempt however he ſucceeded no further than obtaining the promiſe of a tribute, which the Saxons bound themſelves to pay

A.C. 768. him. The further accompliſhment of all theſe undertakings was reſerved for his ſon Charlemagne.

Charlemagne would not have ſucceeded ſo well as he afterwards actually did, if his brother Carloman with whom he had divided the kingdom, but lived in continual variance with, had not died in the year

A.C. 771. 771. Upon his death he immediately took poſſeſſion of the whole government, and from that time employed himſelf in great undertakings, every one of which ſucceeded. Even the preſent ſtate of the dominions which were under his ſceptre, is in a great meaſure owing to his activity.

The firſt enterpriſe of this kind was the conqueſt of Lombardy, which laid the baſis for the connexion which even now ſubſiſts between the Germanic Empire and Italy, though at that time it was merely a perſonal conqueſt. Charlemagne had divorced his Queen Sibylla, who was a daughter of Deſiderius, the King of Lombardy. Deſiderius, on the other hand, had received Charlemagne's ſiſter-in-law, the widow of Carloman, with her ſons, at Verona, and had offered protection to others likewiſe who were diſſatisfied, and had fled from Charles's government. At laſt Pope Adrian the Firſt himſelf, on account of the hoſtilities which Deſiderius had commenced

menced against him, called in the assistance of Charlemagne, as Protector of the Roman Church. Charlemagne for this reason, in 774, marched two armies across the Alps, and by an engagement fought between Novara and Pavia, and the conquest of Verona, made himself master of the whole kingdom of Lombardy. At Pavia Desiderius himself fell into his hands, whom he sent to a monastery in France. From that time he took the title of King of Lombardy, and put an end therefore to a monarchy which had subsisted for 206 years. Adalgis the son of Desiderius indeed had fled to the Greeks, and, in conjunction with the Lombard Dukes of Frioul, Spoleto, and Beneventum, made fresh commotions: but Charlemagne, in 776, attacked them again in person, and every where gained the advantage. Instead of these Dukes he afterwards appointed, for the most part, Frankish Counts. Thus in a few years he confirmed the conquest of a country, which, on account of the fertility of its soil, and the number of towns which were built there, particularly the flourishing cities of Genoa, Florence, Pisa, and Venice, which had the sole possession of commerce, was considered as the first in Europe; and amongst other things Charlemagne was enabled to communicate from thence a greater degree of cultivation to his other territories.

CHAP. VI.

A. C. 774.

A. C. 776.

Before Charlemagne made his first expedition to Italy, he made an attack, in the year 773, upon the Saxons, whom he was resolved to subdue entirely, and at the same time convert them to his religion.

BOOK I. Thirty-three years elapſed, in the courſe of which he made twenty expeditions againſt them before he accompliſhed his deſign. In the interim however he was involved in various wars in different countries; which made it ſurpriſing how, at ſuch great diſtances, ſometimes at one, and ſometimes at the other extremity of his country, he could almoſt annually lie with an immenſe army in the field, and at laſt return with laurels, and ſome new acquiſition to his empire.

A. C. 778. In the year 778 he undertook ſuch an expedition as this to Spain, when a Saracen King, Ibinalarabi of Saragoſſa, whom another Saracen King, Abdaram of Cordova, had depoſed, came as far as Paderborn to implore Charlemagne's aſſiſtance. This circumſtance was the more glorious for him, as it muſt have been ſtill freſh in the memory of his people, that fifty years had not elapſed ſince a Saracen power, from Spain, had endangered the whole nation of the Franks. Charlemagne embraced this opportunity of extending the weſtern borders of his dominions beyond the Pyrenean mountains, as far as the river Ebro.

From this time he made greater progreſs in his war with the Saxons. After defeating them in the year 782, he gained two ſucceſſive victories in the following year, a ſhort time after each other, at Detmold, and on the Haſe, in the Biſhoprick of Oſnabruck. Though by this he made himſelf maſter of a part of Weſt-

Weſtphalia, he had ſtill much to do before he could reduce the country now called Lower Saxony, as far as the mouth of the Weſer and the Elbe. A circumſtance which particularly favoured this deſign, was an alliance which the Obotrites, a people of the preſent country of Mechlenburg, formed with him, in order, if circumſtances required it, to attack the Saxons on the lower part of the Elbe in the rear: but other Venedic nations, from the adjacent country of Pomerania, ſoon fell again upon the Obotrites. This obliged Charlemagne ſeveral times to paſs the Elbe, in order to ſecure the Obotrites from ſuch attacks in future. To theſe expeditions, amongſt other places, Dreſden, and probably the city of Hamburg, on the Upper and Lower Elbe, are indebted for their origin; I mean, for their firſt erection as fortified caſtles, which Charlemagne found it neceſſary to build for the defence of the country. I ſay, probably the city of Hamburg, though * that name does not then occur, but only the name of Hochbuchi, as a caſtle on the Lower Elbe; which however ancient writers deſcribe, as ſituated where the preſent city of Hamburg is.

Another

* Bavaria did not yet loſe its former quality of a ſeparate Dutchy. In the diplomas were ſtill reckoned the years of the reign in Bavaria, and ſometimes the words uſed *in regno Francorum, & in ducatu Baioariorum.* Charlemagne appointed one Gerold of Swabia, his brother-in-law, as Governor in Bavaria; he ſent ſeveral Franks as Counts of the Bavarian Cantons; and placed Margraves on the frontiers towards the Sorbi, Bohemians, Huns, and Sclavonians; ſo that the Frankiſh Kings ſeemed from this time to be themſelves Dukes likewiſe of Bavaria.—Lori's Hiſtory of Bavaria, p. 128, 130.

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Another expedition Charlemagne thought neceſſary to make more than once into Bavaria, and on the ſame occaſion he penetrated deep into Hungary. Taſſilo, who was then Duke of Bavaria, had married the ſiſter of the Princeſs of Lombardy, whom Charlemagne had divorced. He could not therefore be indifferent to the fate which his father-in-law, Deſiderius, had ſuffered; but the end of all his commotions was, that he was obliged, in 788, to quit his Dukedom, and retire to a Convent called Lorſch; upon which Charlemagne divided Bavaria only amongſt Counts.

Taſſilo had on this occaſion brought the Huns into action; but theſe were not only repulſed by Charlemagne in 788, but, upon a freſh rupture with him in 791, were driven back, in 799, with great ſlaughter, as far as the river Raab, where he afterwards appointed Frankiſh Margraves.

A. C. 799.

During theſe expeditions Charlemagne formed a deſign of uniting the Rhine and the Danube by means of a canal. The Altmuhl, a river which riſes in the country of Anſpach, runs through the country of Eichſtadt into the Danube. Another river, the Rednitz in Franconia, on which Bamberg lies, flows into the Maine. By the union of theſe two rivers therefore he was in hopes of accompliſhing his plan. In the year 793 the neceſſary canal was actually made, and he went upon it himſelf from Ratiſbon to Wurtzburg: but the work was not conducted with ſufficient ſkill and foreſight; the whole of it therefore was rendered

dered abortive, and is so much the more to be regretted, as not only the two above-mentioned rivers would then have been united, but the Black Sea and the Ocean. From this canal* the village of Graben, in the county of Pappenheim in Franconia, derives its name, where some remains of it may still be observed.

One of the most important events of Charlemagne's life happened towards the end of the eighth century, when the dignity of Roman Emperor, which had been extinct since the year 476 at Rome, and only continued at Constantinople with the Eastern part of the empire, was revived in his person; an event which undoubtedly laid the basis of the Imperial dignity's being at present annexed to Germany.

Charlemagne, it is true, had already, in the character of Roman Patrician, undertaken to protect the city of Rome, and the Catholic Church; but the sovereignty of the city still properly belonged to the Court of Constantinople. From thence however for a long time there had been nothing either to be hoped or feared. The first step the Romans ventured on, was in the year 796, when they made a solemn delivery of the standard of the town to Charlemagne, who was then in Italy, and thereby resigned the government. Notwithstanding this, the former dominion of the Greek Imperial Court was not wholly abolished, as the title of Patrician, under which Charlemagne exercised his rights, seemed

* In the German language, GRABEN.

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seemed to convey the idea of a certain dependence on the proper Roman Emperors; but there needed only a year or two to elapse before an opportunity was likely to offer of prosecuting those steps which had once been hazarded.

A. C. 799. This opportunity presented itself in the month of April, 799, when Pope Leo the Third was attacked by some conspirators in a procession at Rome; but was then rescued, that he might take refuge in Charlemagne, whom he for that reason personally visited at Paderborn. Charlemagne at first sent some Bishops and Counts, as commissioners, to Rome, previously to examine the affair. He soon afterwards went him-

A. C. 800. self, and on the 15th of December of the year 800, held a public tribunal in St. Peter's church; the event of which was, that Leo, upon his declaring in the most solemn manner, upon oath, that he was innocent, was acquitted of all the crimes and accusations alledged against him, and his opponents and accusers banished. Ten days after this, followed the feast of Christmas, when Leo himself performed the service in the church. As Charlemagne was on his knees before him at the altar, Leo quite unexpectedly placed a crown upon his head, and exclaimed, *Vivat Carolus Imperator Augustus!* which was immediately re-echoed with joyful acclamations from every part of the church. Charlemagne at last reconciled himself to this surprise, and from that period prefixed the title of Roman Emperor to his former title of King of the Franks and Lombards.

Whether

Whether this was a real, or perhaps only an affected surprise, or whether the affair had not been long before premeditated, would be difficult now to decide. This however is certain, that from this moment the remains of any dependence upon the Greek Imperial Court, which the city of Rome, and even Charlemagne as Roman Patrician, might perhaps have before acknowledged, were at once publickly destroyed. In this respect the opportunity chosen was not a bad one, as, in 797, Irene had usurped the Imperial Throne, which was not properly her right; and thus at all events left a possibility that Charlemagne and Irene might marry, and that the Eastern and Western Empires therefore, which had till then been separated, might be again united. The reciprocal embassies which had already taken place between them, gave room to believe that there was somewhat more in agitation than a mere possibility. But just at this juncture Irene was dethroned at Constantinople. Her successor Nicephorus was not at all contented with what had passed at Rome, so that it was the occasion of a war breaking out in the lower part of Italy: but it was not in the power of Constantinople to annul the grand event. The boundaries of the country therefore which still belonged to the Greeks in Italy, were fixed by a peace which Nicephorus, and his successor Michael, made with Charlemagne.

As soon as the dependence which the Romans had hitherto acknowledged on the Court of Constantinople was once dissolved, they certainly had it in their

power

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power to revive the Imperial dignity, as it was formerly annexed to their city and territories; especially as they found a Prince now, who could add the necessary weight to his cause, in order to make other nations and states acknowledge the adopted title. The actual cause of the whole affair must be attributed to the unanimous voice of the people, as they were assembled in the church on Christmas day, in the year 800. It was easy to foresee what afterwards actually happened, that not only the Romans, but the Lombards and Franks, would approve of the affair, and that it would be difficult to find any other nation who would dare to oppose it. Exactly in this manner the Prussian monarchy, which was first erected in the present century, owes its legal establishment to the Prussian States agreeing with their Prince, who was of the House of Brandenburg, that he should adopt the royal title; which was not only acknowledged by his other subjects, but by degrees by the other European States.

The part which the Pope personally took in procuring Charles the title of Emperor, was certainly of the utmost consequence, as the whole event would probably never have happened, if the Pope had not first put it in motion. Supposing however, that instead of the universal approbation which followed in the church there had been a clamorous opposition, in that case the proclamation and exertions of the Pope would have been of no avail. In fact, it was the same in this affair as in many instances which occur in history, where a revolution has happened, and

and an unexpected usurpation of the throne often primarily occasioned only by a private soldier. But as little as such a person can be said to be the author of what the revolution produces, equally as little could the Papal power be considered as the actual source to which the Imperial dignity was indebted for its origin.

With respect to the effects which the revival of the dignity of Roman Emperor in Charlemagne produced, he now became, no doubt, the independent sovereign of the city and its dominions; and at the same time entitled to every thing which the revival of the dignity could comprehend on the part of the Romans, and the acknowledgement of it from the other nations and states which then existed. Those countries which had once been legally separated from the ancient Roman Empire, certainly could not be included; but many of them were already in Charlemagne's possession, as King of the Franks and Lombards, and others he might some way or other lay claim to. At all events Charlemagne now considered himself, and not without reason, as the first in the rank of Monarchs.

Whatever the prerogatives of the revived Imperial title, and the territories depending upon it might be, still it is evident that its relation with respect to Charlemagne's other States was only personal, without any real union taking place, either with the kingdom of Lombardy or of the Franks, which Charlemagne was already in possession of. Exactly as the House of Brandenburg adopted the title of King of Prussia, without the

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the proper kingdom of Pruſſia, and the other dominions of the Houſe of Brandenburg, being incorporated; or, to bring another example, as the Houſe of Hanover has acquired the crown of Great Britain, without the country of Hanover and England being on that account blended together; at leaſt by no means as the kingdoms of England and Scotland have eſtabliſhed a real union under the name of Great Britain, in the form of a ſingle kingdom.

Charlemagne always carefully preſerved the ſeparate titles of Roman Emperor, King of the Franks, and King of Lombardy. To be ſure, his Chiefs may, even at that time, have thought it an honour to have an Emperor for their Lord: as in Brandenburg, ſince the year 1701, the Electoral troops are no longer called by that name, but Royal Pruſſian; or, as in the Electorate of Brunſwick, every perſon in office claims his ſhare of the Royal honour, by being called King's officer, whether he immediately depends upon the Britiſh crown, or on the King, in his Electoral dominions of Hanover, the Dutchy of Bremen, or any other country belonging to him. In the time of Charlemagne, certainly no one imagined that his Frankiſh dominion, or our preſent country of Germany, was converted into the Roman Empire by his adopting the title, or connected with it on the footing of an actual union. Although Charlemagne, in affairs perhaps which concerned the government of Rome, might conſider himſelf as the ſucceſſor of the ancient Roman Emperors, he certainly never thought

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ſo in affairs which concerned the Franks and Germans. George the Firſt, as King of Great Britain, was no doubt a ſucceſſor of Queen Ann; but who would imagine that the acts of Parliament paſſed during the reign of that Queen, were, for that reaſon, applicable to the affairs of Hanover? Yet an opinion has even lately prevailed, that Charlemagne was the ſucceſſor of Juſtinian, and therefore the Juſtinian code of laws was equally as valid in Germany as at Rome. In ſupport of this was adduced the prophecy of Daniel concerning four monarchies, the laſt of which, which was to endure till the end of time, was the Roman empire, transferred from the Greeks to the Franks. In fact there was no tranſlation of the Imperial dignity from Conſtantinople at all; for the title of Emperor in the Eaſt was ſtill continued. It was nothing more than a revival of the Weſtern title according to the former diviſion; and thus the inſcription on the coins of thoſe days was very properly RENOVATIO IMPERII, and not TRANSLATIO. This laſt expreſſion was firſt uſed in the ſubſequent ages at Rome, and the grand principle connected with it, adopted, that the Pope, by divine authority, or rather his own arbitrary will as God's Vicegerent, reſtored the Empire from the Eaſt to the Weſt, and transferred the Imperial dignity from the Greeks to the Franks. This idea certainly never exiſted in the time of Charlemagne; but it was worth while to place the matter here in its proper light, on account of the incredible conſequences which have been ſince deduced from ſo many, and ſuch falſe repreſentations.

BOOK I. A.C. 804.

Charlemagne had been already for ſome years in poſſeſſion of the Imperial crown, when he finally accompliſhed his deſigns in Saxony in 804. After the victories mentioned above, which he gained in 783, thoſe Saxon tribes which were at that time included under the names of Weſtphalians, Angrians, and Eaſtphalians, by degrees ſubmitted; but the Franks found it ſtill difficult to reduce the Wimodi and Nordalbingi, as the inhabitants of the preſent Dutchies of Bremen and Holſtein were called, to ſubjection. Charlemagne made great devaſtation in their country in the years 796, 797, and 798, but without effect. At laſt he had recourſe to the violent expedient of tranſporting ten thouſand families from the countries of Bremen and Holſtein to other parts of his dominions *, and granting their ſettlements to the Obotrites his allies. The principal condition on which the Saxons ſubmitted to peace, was, that they ſhould not be ſubject as a people incorporated with the Frankiſh empire, but be conſidered upon a perfect equality; and that Charlemagne ſhould only enjoy the ſovereignty over them as two ſeparate nations, equal to each other. The effects of this have been viſible ever ſince; for Saxony has always preſerved its particular rights, which diſtinguiſh that country from the reſt of Germany; and the two vicariates themſelves ſeem to

* Moſt of them were conveyed to his own domains in different parts of the empire, where traces of them are ſtill left in the places named after them; as at Saxenhauſen, near Frankfort, Saxenheim and Saxenflur, near Konigſhof in Franconia; where there have evidently been royal farms or villas.

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to owe their origin to this circumſtance, as the Saxon lands have ſtill their own Vicar, and all the other German territories are ſubject to the vicariate of the Palatine on the Rhine.

The moſt difficult point to be ſettled in the negociations of peace with the Saxons, was, no doubt, that of religion. Benevolent and excellent as Chriſtianity is when viewed in its original purity, it muſt naturally have ſtartled the Saxons, when they ſaw what violent methods were adopted to compel them to embrace it; when it was left to the option, for inſtance, of thouſands at a time, either to ſubmit to be baptized, or to be plunged in the river Weſer; and when Charlemagne expreſsly ordained by law, that thoſe Saxons who concealed themſelves, and would not be baptized, ſhould be puniſhed with death. (*a*)

Another circumſtance which appeared particularly oppreſſive to the Saxons, was, that the Prieſts of a religion which they were compelled by violence to embrace, ſhould receive the tenth of the produce of their lands. Charlemagne's friend Alcuin, the Engliſhman *, adviſed him not to inſiſt upon this: but it

(*a*) Capitul. de partibus Saxoniæ, Cap. viii.

* Offa, King of the Mercians, was become ſo conſiderable in the Heptarchy, that Charlemagne entered into an alliance and friendſhip with him; and at his deſire Offa ſent him over Alcuin, a clergyman much celebrated for his knowledge, who received great honours from Charlemagne, and even became his preceptor in

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it was made one of the conditions of peace, though it does not appear afterwards to have been actually brought into general practice (*a*).

At the commencement of this war Charlemagne had ordered a church to be built at Paderborn, and sent a number of missionaries from thence every campaign, to spread Christianity as far as possible. When he had acquired firmer footing in the interior parts of the country after the year 783, he was better able to provide for the establishment of regular Bishopricks; and then it was, no doubt, that the foundations were laid of the Bishopricks of Osnabruck (*b*), Minden, Halberstadt, Verden, Bremen, and Munster. For the see of the present Bishoprick of Hildesheim, Charlemagne first fixed upon Elze (a place on the road between Hanover and Einbeck), because he not only found that neighbourhood particularly pleasant, but thought that the small river on which Elze is situated, and which flows into the Leine, might, by means of the navigation from the Leine

in the sciences. The chief reason why he had, at first, desired the company of Alcuin, was, that he might oppose his learning to the heresy of Felix, Bishop of Usgil in Catalonia; who maintained, that Jesus Christ, considered in his human nature, could more properly be denominated the adoptive, than the natural Son of God.—Hume's History of England. Dupin, cent. 8. ch. iv.

(*a*) Möser's History of Osnabruck, Vol. I. page 224, 238, 321.

(*b*) Ibid. p. 275.

Leine to the Wefer, afford an opportunity for commerce. CHAP. VI.

Thefe Bifhopricks in general were of a very different kind from thofe founded in the days of Conftantine, in towns already exifting on the Rhine and Danube. Here the fee of each Bifhop firft occafioned the erection of houfes, and by degrees the founding of cities. There was no idea therefore of an ecclefiaftical capital or metropolis; on which account the Archbifhop of Mentz and Cologne extended their archiepifcopal care over thofe countries alfo (*a*). It was not until the year 834 that an Archbifhop was appointed at Hamburg, whofe fee was removed, in 849, to Bremen.

Immediately after the conclufion of the Saxon war, Charlemagne undertook two expeditions to Bohemia, in 805 and 806, becaufe that people had made an incurfion into the country now called Auftria; in confequence of which the Bohemians were obliged to fubmit to pay to Charlemagne and his fucceffors an annual tribute of a hundred and twenty fat oxen, and fifty marks of filver. After this event the Emperor always confidered A. C. 805.

(*a*) Advantageous as this regulation appeared to the authority of the two Rhenifh Metropolitans, as they acquired provinces thereby which were not to be equalled in Chriftendom; yet the diftance of their fubordinate Bifhopricks was one grand reafon, why the prerogatives of the Archbifhops, which chiefly confift in having the direction at elections, and confecrations, and having infpection over the Bifhops, are not fo fully exercifed in Germany as in other countries.—Schmidt's Hiftory of Germany, Vol. II. p. 197. Vienna, 1784.

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considered Bohemia as a part of his dominions, though he found it difficult to keep the inhabitants in subjection.

The laſt war that ſeemed to threaten Charlemagne, was with the Normans. Under this name were at that time comprehended the nations which inhabited the preſent countries of Sleſwic, Jutland, Denmark, Norway, and Sweden. They were not only renowned, but even formidable, for their navigation and piracies. The coaſts of France had already been frequently moleſted; and Charlemagne, though he had neglected no precaution both by ſea and land to defend them, was ſtill apprehenſive of future danger. On the peace being concluded with the Saxons, theſe Normans became Charlemagne's neighbours at the northern extremity of his dominions; but the boundaries were not preciſely determined. A conteſt aroſe; and both armies were already in the field, when an unexpected revolution took place on the Norman throne, and a peace was brought about, by virtue of which the river Eider was fixed upon as the eſtabliſhed boundary, and which ſtill divides the Dutchies of Holſtein and Sleſwic, and determines in thoſe parts the extent of the Germanic Empire.

Beſides all theſe events recorded in hiſtory, we have a valuable memorial of Charlemagne in the laws which conſtitute the greateſt and moſt important part of the CAPITULARS, as they are called, of the Frankiſh Kings; a work which, though it employed compilers

appointed for the purpose so early as the years 827 and 845, was buried for whole centuries in total oblivion; till at last it was rescued from obscurity in 1531 and 1545, through the care of some learned men of Germany; and since that time there have been several French editions of it, and those certainly much more elegant. It is impossible to read these Capitulars without observing with astonishment the progress Charlemagne made, by means of legislation, in improving the cultivation of the nations subject to his sceptre, and particularly among the Germans. The spirit of this legislation indeed had chiefly military objects in view, as it is obvious enough even now, that in many states military affairs have the greatest influence on their legislation. Thus Charlemagne at that time made a law, that not only every vassal, but those who had free estates, even if they consisted of no more than three hides of land, should hold themselves prepared for war, or else that five men should join to equip a sixth (*a*). But this equipment implied, that every one should not only furnish himself with clothes and arms at his own expence, but provide himself with three months provisions, the beginning of which period should be reckoned from some certain place of rendezvous: as for instance, those who inhabited the countries on the Rhine, and marched towards Spain, were

(*a*) Capitulare Car. M. 807. in Georgisch. Corp. Jur. Germ. p. 733, seq.

BOOK I. to reckon from the Loire; from France towards Germany, from the Rhine; or towards Saxony, even from the Elbe (*a*). From hence we may conclude how oppreſſive a military campaign muſt have been, in thoſe times, for the nation in general.

Charlemagne however did not neglect the eſtabliſhment of benevolent inſtitutions. Amongſt theſe, the ſchools * which he ordered to be founded throughout the country merit the greateſt approbation. In theſe the

(*a*) Capitulare Car. M. 812. Cap. 8. Georgiſch. L. c. p. 764.

* Charlemagne's attention to the ſchools which he eſtabliſhed throughout the empire was very remarkable. A Monk of the Abbey of St. Gall, who wrote at the beginning of the tenth century, relates the following account of an examination at which the Emperor himſelf preſided.

Charlemagne had appointed one Clement, an Iriſh Monk, over one of the ſchools, where there were a great number of boys, ſons of the nobility, as well as of the loweſt claſs of people. After having been long abſent, he ordered the boys to come before him, and ſhow him their letters and verſes. The boys of the loweſt order had unexpectedly performed their buſineſs well, whilſt the young noblemen, on the contrary, had been very negligent. Charlemagne obſerving this, placed the poor boys on his right hand, and thanked them for obeying his orders, which were ſo much to their own advantage. "Continue to improve yourſelves, my "children," ſaid he, "and you ſhall be well rewarded with "Biſhopricks and Abbeys; and I will raiſe you to honour and con-"ſequence: but you," ſaid he, turning to his left, and frowning on the nobles, "you delicate handſome creatures, you are of high "birth, and rich; you did not think it neceſſary to regard my "orders, or your own future reputation; you have deſpiſed know-"ledge,

the youths were thoroughly instructed in reading, writing, arithmetic, singing, and afterwards in logic, rhetoric, geometry, and astronomy. He gave German names, likewise, to the winds and months; such as, OSTWIND, WESTWIND, SUDWIND, NORDWIND, or SUDOST, SUDWEST, NORDOST, NORDWEST, &c. which have continued nearly the same, in several European languages, to the present day. Even the German language is indebted to Charlemagne for its first improvements; he first reduced it to rule, and rendered it capable of being written.*

I omit

"ledge, and given yourselves up to play and laziness, or wasted "your time in useless amusements: but know," said he, with a tremendous look, as he raised the arm that had gained so many victories, "that neither your birth nor beauty shall be of any "avail with me, whatever they may with others; for from Charles "you have nothing to expect, unless you speedily recover your "lost time, and make up for your former idleness by diligence "in future." Characters, &c. from the German Authors of the Middle Ages, by Hegewisch. Leip. p. 19.

* Charlemagne was a great encourager of learned men in general. Eginhart, the first German historian, was educated, with his Princes, under the celebrated Alcuin, and afterwards appointed private Secretary and Chaplain at Court. He wrote the Emperor's life, and several other works; and is said to have been married to the Princess Emma, of whom a late ingenious author has given the following anecdote, from the ancient Chronicle of Laurisham.

Eginhart, the private Secretary of Charlemagne, was a man of merit, and highly esteemed at Court. He was passionately beloved by the Emperor's daughter Emma, who was promised to the Grecian King. The constraint they both laboured under, daily increased

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I omit mentioning the laws enacted by Charlemagne, reſpecting police and agriculture, as well as his endeavours to promote commerce, and regulate the tolls and coinage. One thing, however, I muſt ſtill remark, that he knew how to preſerve the prerogatives of majeſty in affairs which concerned religion and the church; which he ſufficiently evidenced at the ſynod, held under his own

ſed their mutual tenderneſs. They had long ſuppreſſed an avowal of their paſſion, and avoided each other's company, through fear of the Emperor. At laſt forbidden love vanquiſhed every obſtacle. The honeſt Eginhart would not employ a confident; but ſummoned reſolution, and ſtole, in the dead of the night, to the chamber of the Princeſs, knocked ſoftly at the door, and was admitted, on pretence of his bringing a meſſage from the Emperor. They were now alone; and the time flew rapidly along, whilſt they mutually diſcloſed their love, and vowed ſincerity. Eginhart was anxious to return in the ſtill of night; but the hours imperceptibly paſſed, and the morning dawned upon the windows. He ſaw, to his ſurpriſe, the ground he was to paſs covered with ſnow, which could not but diſcover the footſteps of a man. For a while they were anxious for each other's ſafety; till at laſt Emma, emboldened by her love, offered to carry her faithful Eginhart through the ſnow, to his apartment. Unluckily they were obliged to paſs the window of the Emperor, who was not aſleep, and ſaw, with aſtoniſhment and grief, his daughter bending beneath her burden as ſhe went acroſs the court, and obſerved her carefully tracing her footſteps back. Charlemagne for a long time concealed his diſpleaſure, and took no notice of what had paſſed; but Eginhart's conſcience troubled him. The event could not always remain a ſecret: he threw himſelf therefore at the Emperor's feet, and on pretence that his ſervices were but ill requited, earneſtly ſolicited diſmiſſion. The Emperor appointed a day to attend to his complaint, and on that day aſſembled the Nobles of the Empire. He then laid the offence

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own inſpection in 794, at Frankfort on the Main. Amongſt the decrees of that Council were ſeveral reſpecting the worſhip of ſaints, quite contrary to the opinions then prevalent at Rome; though Charlemagne inſerted ſeveral articles in his Capitulars, from the collection of church decrees which had been preſented to him at Rome by Pope Adrian I. Thus much is certain, that Charlemagne conſidered all

offence which Eginhart had been guilty of, before them, and required them to paſs ſentence according to their judgement. Every one was aſtoniſhed at the unprecedented fact. Many called out for unexampled puniſhment; others only voted for baniſhment; and ſome, more mild and conſiderate, requeſted that the ſentence might be left to the wiſdom of the Monarch. "Providence," ſays Charlemagne, "frequently brings good out of evil; and I doubt "not but that he will do ſo in this inſtance alſo. I will not revenge "the crime of my ſervant by a puniſhment which will only increaſe "the diſgrace of my daughter. Let them be joined by a legal "marriage; and thus an act that was criminal, may be forgotten "in one that is honourable." The whole aſſembly expreſſed their approbation of the Emperor's benevolence, with loud ſhouts of applauſe. Eginhart, who did not know he was diſcovered, was now called in; and the Emperor, with a ſerious countenance, addreſſed himſelf to him in the following words: "You complain that your "ſervices are not ſufficiently rewarded. That is your own fault, "Eginhart: you ſhould have reminded me long ago, for I am "far from being equal to the performance of all my duty. But con- "tinue to ſerve me as faithfully as you have already done, and I "give you for a recompence my daughter for a wife. Yes," ſaid he ſmiling, "her who lately ſo ſubmiſſively carried you" *(veſtram ſcilicet portatricem)*. Who can picture Eginhart's ſurpriſe? Emma was then called; and the Monarch's paternal hand gave the bluſhing Princeſs to the arms of Eginhart.—Sturtz. Vol. II. Carlſruhe edit. p. 372.

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all the Archbishops and Bishops of his Empire as his spiritual officers, and the Bishop of Rome only as the first. He had no idea of the immunity of the Clergy, nor of their spiritual jurisdiction (*a*) *. These were

(*a*) There was one ordinance admitted in the Capitulars, which was attributed, but falsely, to Constantine the Great; by virtue of which the Bishops were not only allowed to act as arbiters, with the consent of both parties, but even to determine causes, on the application of one. Capitularia Reg. Francor. lib. 6. cap. 366. in Georgisch. *Corp. Jur. Germ.* p. 1585. The Bishops likewise had the general inspection of the people's morals. Capit. 755. c. 3. Georgisch. l. c. p. 515. From whence arose a sort of court of decorum, which the Bishops held at their annual visitations in their respective dioceses, under the name of SEND (Synod).

Schmidt's History of Germany, Vol. II. p. 206.

* The account given by the same author of this species of tribunal is very characteristic of the manners of the times.

The Archdeacon or Priest went before the Bishop, and announced his arrival, threatening excommunication to all who did not attend. He then inquired into such causes as were of no importance, and determined them himself, that the Bishop might not be detained. As soon as the Bishop arrived, a number of steady and respectable men were chosen; in general seven, who took an oath that they would not conceal any thing from the Bishop, either through love or fear, the hope of gain or motives of friendship; but declare, to the best of their knowledge, all that had been done in the district against the will of God, or laws of Christianity, or any thing that should hereafter be done during their lives, if it was a matter which could come before that Synod, or Bishop's jurisdiction. The Bishop then addressed them in the following words; "Brethren, see that you keep your oath, which you have not sworn "to man, but to God your creator. We, who are his servants, "seek not your property, but the salvation of your souls. Take "heed therefore that you conceal nothing, whereby you may "become

were principles which, though afterwards maintained by them, he never admitted. The rights of supremacy in religious and ecclesiastical affairs were then sufficiently in the hands of Charlemagne; and as he professed

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"become guilty of the sins of others." They were then asked, If there was any body in that parish who had, either intentionally or by accident, killed another, even if it was his own servant or his maid? If any one had cut another's hands or feet off; been guilty of perjury, adultery, &c. Other questions were, Whether any body had robbed a freeman or servant, stranger or traveller, or by any stratagem decoyed them, and afterwards sold them in another country; or if they had sold a Christian slave to a Jew; or if the Jews carried on the trade of buying and selling Christian slaves themselves?

If there was any witchcraft, necromancy, or fortune-telling? Whether any one offered sacrifices near trees, springs, or stones, as at an altar; brought lights there, or made any other present, as if a Deity was present, who could do them either good or evil? Whether any woman pretended, by witchcraft, to change the disposition, and convert hatred into love, or love into hatred; to injure another's property, or conjure it away? Whether any one pretended, on certain nights, to ride strange animals, with devils in the shape of women, and to keep them company?

Whether any one eat the blood or flesh of a dead animal, or of one killed by its own species? Whether any one drank the water in which a weazel, a mouse, or any other unclean animal, had been drowned?

If any one eat or drank any thing, or bore any thing about him, which he thought could avert the judgement of God?

Whether the women, in their weaving or spinning, made use of any expression or observation that was not in the name of the Lord?

Whether any one sung profane songs in the night time; ate, or drank, or otherwise made themselves merry over the dead?

Whether

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professed the same religion as his subjects, there was no danger of his misapplying his power to its prejudice.

In

Whether any one withheld the tithes from God and his Saints, treated his own Priest with contempt, went to strange churches, communicated there, or paid their tithes there?

If Deacons were appointed in each parish to admonish the people to go to church, to attend matins, mass, and vespers; to do no work on holy-days, and, if any body did, to inform the Parish-Priest?

If any body refused entertaining pilgrims or travellers?

If any one disputed the Bishop's right, or opposed those whom he ordered, when the peasants or servants were unruly, to chastise them on their naked bodies with rods? Whence we may learn the little estimation in which peasants were held in those barbarous times; for long after this it was even common in many places for a rod, a pair of sheers, and the Holy Gospel, to lie on the Synod table.

How the (BRUDERSHAFTEN) fraternities, or clubs, behaved; i. e. if they were dangerous to the Government, or immoderate in drinking?

If any one sung indecent or light songs too near the church? With many other questions of the like nature.

A penance was then imposed upon those who were found guilty, according to the nature of the offence; but they could be released for money. If a man could not fast, and was rich, he was to pay twenty shillings for seven weeks; if he could not give so much, ten; and if he was very poor, three. This was appropriated either to the release of prisoners, to the altar, the clergy, or the poor, and the beginning probably of the indulgences afterwards granted by the Popes. Sometimes the penance was changed for the repetition of a certain number of prayers: for instance, when a man was sentenced to fast a month, it was equivalent if he repeated 1200 psalms upon his knees, or 1680 standing.

Schmidt's Germ. Hist. Vol. II. p. 212.

In the year 798 Charlemagne caused likewise the Bishop of Salzburg to be raised to the rank of Archbishop over the other Bishops of Bavaria; and, by his orders, the Pope conferred upon him the pallium (*a*) and public consecration (*b*). Charlemagne at last diffused a proper animation through all his regulations, by occasionally visiting the different parts of his dominions in person, and holding tribunals of justice under his own inspection; as well as sending every where, where he could not be present himself, particular commissioners, "*missos regios*," to see that every ordinance was enforced with vigilance and care; and for this reason almost every page of his Capitulars contains particular instructions for the conduct of those commissioners.

(*a*) In the reign of Charlemagne, as well as the Frankish King before him, it was usual for the Sovereign to nominate most of the Bishops himself, and exercise the fullest jurisdiction over them, as well as the Abbots and other Clergy; to receive their complaints when they thought themselves aggrieved by their superiors, and appoint days of penitence and prayer. Neither could any one that was free born enter into the ecclesiastical state without the royal permission. The King likewise appointed the Councils of the Church, and their decrees could only be rendered valid by royal confirmation.—Schmidt, p. 338, 605, &c.

(*b*) Thus Leo the Third wrote himself to Charlemagne—" Intonuit nobis, quod vestra regalis excellentia *mandasset* nobis,—" quod Arnoni episcopo *pallium* tribueremus; & libenti secundum " vestram *regalem demandationem* accommodavimus animo, & " præfato Arnoni usum pallii concessimus, & in provincia " Baioariorum eum canonice *ordinavimus Archiepiscopum.*"—Account of Juvavia, Diplom. No. II. p. 52.

CHAP-

CHAPTER VII.

Decline and Fall of the Frankish Empire, under Lewis the Pious and his Successors.

Charlemagne's division of the Empire amongst his sons—Lewis the Pious or Debonair's imitation of this example—Its ill effects even during his life—War concerning the succession amongst his sons till the treaty of Verdun, 843—Contents of the treaty—Origin of the kingdom of Lorraine—Further divisions and disputes concerning the succession.

Other circumstances at this period relating to the constitution of the Empire—Relaxed state of the government—The consequence of the States increased—Incursions of foreign nations, particularly the Normans and Venedi—Restoration of some of the Dukes, and their increase of power—Means of defence in the castles on the mountains, and retaining of vassals—Predominating right of private war, and feudal tenure—Increasing influence of the States in the affairs of government—Decline of scholastic institutions, and neglect of science.

History of a very remarkable book, dispersed under the name of Isidorus of Seville—as an authentic collection of letters from the Popes, and decrees of the Councils—The contents of which attribute the highest power to the Popes from the very first centuries—by letters and decrees, either forged or interpolated—The probable author, and the manner of dispersing it—The imposition first discovered in the sixteenth century.

Influence of the Isidorian book on the succession of Lotharius II.—Further successions in Lorraine, and the union of that country with the Germanic Empire—Origin of two Burgundian kingdoms, and their union—Further successions in Germany and

France

France—Diſpute about the ſucceſſion to the French crown on the death of Lewis the Stammerer, occaſioned by his two marriages —Excluſion of Charles the Simple—Union of both Monarchies under Charles the Groſs—Their fall. CHAP. VII.

CHARLEMAGNE muſt ſtill have had a lively idea, from his own experience, of the important conſequences attending the diviſion of a kingdom amongſt ſeveral brothers, when he recollected the diviſion which had formerly been made between him and his brother Carloman. It was the more ſurpriſing therefore, that notwithſtanding this, in the year 806 A. C. 806. he divided the kingdom amongſt his three ſons, who were then living, and arrived at years of maturity, though the death of the two eldeſt, Charles and Pepin, rendered this diviſion fruitleſs. By a new arrangement, Bernard the ſon of Pepin was to have poſſeſſion of Italy; but Charlemagne now appointed his only ſurviving ſon, Lewis the Pious, his ſucceſſor in all the other parts of his dominions, and nominated him likewiſe, after the manner of the ancient Roman Emperors, Co-emperor during his own life.

Charlemagne did not think of making theſe arrangements reſpecting the ſucceſſion to his throne till he was very much advanced in age, and ſoon afterwards left the world in his ſeventy-ſecond year. His immediate ſucceſſor, Lewis the Pious, was thirty-ſix years old when he came to the government; and in this reſpect very unſeaſonably imitated the example

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of his father; for in the year 814, the firſt of his reign, he made his ſon Lotharius, who was but eighteen years old, King of Bavaria (*a*); and two years afterwards, when he had two other ſons, Pepin and Lewis, the pious Emperor convened a public aſſembly of the Empire, and with their conſent, amidſt variety of ceremonies of faſting and praying, which laſted three days, he iſſued a decree, that his younger ſons, Pepin and Lewis, ſhould ſucceed on his death to the titles of Kings of Aquitain and Bavaria; but that they ſhould, in certain reſpects, be ſubordinate to Lotharius, who as the firſt-born ſhould inherit the imperial dignity, and every thing elſe remaining.

Lewis met with ſome trouble on account of this diviſion, with his nephew Bernard in Italy, who was for that reaſon deprived of his ſight; which occaſioned his death. But the troubles he was afterwards involved in were infinitely greater; for, on the death of his firſt wife, having married Judith of the celebrated Guelphic family *, he was obliged to

(*a*) After this time we find in the Bavarian diplomas the following ſubſcriptions: *Anno II.* LUDOVICI IMP. *et anno I. ex quo Rex Hlodarius Baioaria feliciter intravit*; or, *Hlothario dominante rege Bavariorum I*; or, *Anno I. Hlotharii regis in Baioaria.*"

LORI, Hiſt. of Bavaria, p. 140.

* The Guelphic family, the anceſtors of the preſent Houſe of Brunſwick, are ſuppoſed to derive their origin from the ACTII, a noble Roman family, celebrated in ancient hiſtory, who from their ſettlement

to make new diviſions ſeveral times in favour of a ſon he had by her, called Charles the Bald. This occaſioned the remainder of the life of Lewis the Pious to be a continued ſeries of inteſtine cabals and

ſettlement at Eſte were called the Houſe of Eſte, and many centuturies before Charlemagne came to Italy had large poſſeſſions there, and diſtinguiſhed themſelves by the gallant defence of their country. There is ſcarcely any action of conſequence, either relating to war or peace, in which one or other of this lineage has not had a part. It may be traced for fourteen hundred years, long before the birth of Chriſt.

The Actii, in the time of the Republic, retired to Eſte, or Alteſte, an ancient city in that part of Italy called Venetian Lombardy, and from thence received the name of *Alteſtina Domus*, or the Houſe of Eſte. *Tacitus*, l. iii. *Plin.* l. iii. c. 19. It appears by ancient authors, that this family was long before in great repute, and that Romulus had a ſtatue erected to them; an honour the Romans never conferred except on account of the higheſt merit. One of that family, named Caius Actius, was known in the time of Tarquinius Priſcus, about ſix hundred years before the birth of Chriſt; and another, whoſe name was Marcus Actius Balbus, according to Suetonius, (Cap. 3 & 4) had in marriage Julia, ſiſter of Caius Julius Cæſar; and his daughter Actia was the mother of the Emperor Octavius Auguſtus Cæſar.

The retirement of this family is without doubt the reaſon that we have no ſatisfactory account of it to the year 390, after the birth of Chriſt; and the great migrations of the many barbarous nations, which ſoon after began to change the face of Italy, appear to be the occaſion that this warlike family made itſelf known again in the defence of their country. Thus much is certain, that the genealogy of the Houſe of Eſte, and conſequently that of the Houſe of Brunſwick, can be deduced from that time to the preſent day, without interruption.

For a more particular account of this ancient family, ſee Rimius's Memoirs of the Houſe of Brunſwick, p. 2, 3, and his Genealogical Tables.

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quarrels, which were frequently carried to the greatest extremities, sometimes between the father and his sons, and sometimes the sons against each other. The Emperor more than once was taken prisoner by his own children, compelled to do public penance, and even abdicate the government. If the youngest son rescued him at one time from the violence of his elder brother, at another time he was himself engaged against him; and at last he died in the year
A. C. 840. 840, in an expedition which he undertook against his youngest son Lewis, surnamed the German.

His death however neither brought tranquillity to his family nor empire. His sons, on the contrary, engaged in a destructive war, in which at last Lotharius was on one side, and Lewis the German and Charles the Bald on the other; and which, after a bloody battle fought at Fontenay, June 25th, 841, was first put an end to by a treaty of partition concluded by
A. C. 843. the brothers at Verdun in the year 843. This treaty of Verdun is still remarkable as one of our first fundamental laws, as it determined the boundaries which are upon that authority even now observed between France and Germany. The Western Frankish Empire, or the country now called France, which was the part allotted to Charles the Bald, was bounded towards the east by four rivers, the Rhone, the Saone, the Maes, and the Scheldt. All that was on this side those rivers came then to the possession of Lotharius, together with the title of Emperor of the Frankish States in Italy. From the son of this Prince, who

who bore the ſame name, that country, after Italy was ſeparated from it, was called after him the Lotharingian Empire, or conciſely, Lorraine, and extended itſelf from the four rivers above mentioned as far as the Rhine, where the patrimony began of Lewis the German, except that that Prince was in poſſeſſion, by agreement, of the countries of Spire, Worms, and Mentz, on the left ſhore of the Rhine. The kingdom of Lorraine was afterwards united to the German Empire; ſo that the Rhine has no longer remained ſince that period the weſtern boundary of Germany; but the Empire extended to the four rivers which have ever ſince ſerved as the foundation of the boundary of the eaſtern part of France. CHAP. VII.

Twelve years had ſcarcely elapſed after this diviſion of the Frankiſh Empire at Verdun, before the patrimony of Lotharius was again divided in the year 855 into three parts. His eldeſt ſon, Lewis II, acquired the poſſeſſion of Italy with the title of Emperor; Charles, the youngeſt, got Provence; and the middle one, Lotharius II, the kingdom of Lorraine, properly ſo called after him, on the Moſel, the Maes, and the Scheldt. A.C. 855.

Twenty years after this, theſe three brothers deceaſed one after the other, and none of them left any legitimate male iſſue. Inſtead of the three branches, therefore, amongſt whom the Frankiſh Monarchy was divided in the year 843, in 875 there were only two of them; and theſe were not all agreed con-

BOOK I. cerning the manner of uniting the countries of Lorraine, Lombardy, and the Roman Empire, which were thus vacated, to the eaftern or weftern empire of the Franks. But before we purfue our inquiries on this fubject, there are feveral circumftances neceffary to be remarked, which had the greateft influence on thofe periods, as well as on the conftitution in fucceeding years.

The perfonal imbecillity of the mind of Lewis the Pious, and the feries of domeftic and public commotions in which he was conftantly involved, had already occafioned a confiderable decline of the authority which the Crown poffeffed in the days of Charlemagne, both at home and abroad. It was even vifible in the internal ftate of the Empire during the reign of Lewis the Pious, that the confequence of the STATES increafed. This was partly owing to the Emperor's having been too liberal in his diftribution of prefents, and other acts of beneficence; and partly to his having given up, in cafes where he ftood in need of the counfel or fupport of the States, fometimes from good-nature, and fometimes from neceffity, much more than was conducive to the intereft of the Crown, or ufual in other reigns*. After the

* In tantum largus, ut antea nec in antiquis libris, nec in modernis temporibus auditum eft, ut villas regias, quæ erant fui et avi et tritavi, fidelibus fuis tradidit, eas in poffeffiones fempiternas, et præcepta conftruxit, et annuli fui impreffione cum fubfcriptione manu propria roboravit.

THEGAN. de *Geftis Ludov.* c. xix.

the death of Lewis this was carried to ſtill greater extremities, when his ſons and ſucceſſors being perpetually engaged in quarrels, and at war, each party found its intereſt in gaining as many of the Nobles as poſſible in its favour, and on this account willingly granted them greater liberties and prerogatives, or connived at their enjoyment of them. Thus it ſoon became obvious, that the Kings were unable to undertake any thing of importance without the conſent of the States.

With this at the ſame time was connected the external decline of the Empire. Amongſt other inſtitutions of Charlemagne which had fallen by degrees to ruin, were thoſe which he had made on the frontiers of the country; and after Lewis's death, when his ſons quarrelled and ſeparated, attacks were made on the borders on every ſide, or elſe encroachments which had been unknown before, even in the inmoſt parts of the Empire. Thus, not only the former poſſeſſions of the Franks in Spain were loſt; but on one ſide, the preſent country of France was annually invaded by the Normans, who ſailed up the Seine and the Loire with veſſels that were light, and on that account the more numerous, and laid waſte the country, or plundered it, and carried off all they could find. On the other ſide, the Venedic nations made perpetual devaſtations in Germany; they broke in from every part of the Elbe, and deſolated all before them: not to mention the attacks of the Saracens on the coaſts of Provence and Italy,

 and

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and the fresh dangers which afterwards threatened the German borders from the Madschari, or Hungarians, who forced their way into Pannonia in the year 862, and in 892 advanced as far as Germany.

These circumstances first occasioned those provinces that were chiefly exposed to invasion from foreign nations, to be entrusted again to the care of more eminent commanders. Charlemagne had suffered the number of Dukes by degrees to decrease; instead of which, Lewis appointed a Duke again, in the year 847, in Thuringia, for the protection of those borders which were exposed to the Sorbi, a tribe of the Venedi. During this reign likewise a particular Duke was appointed in Saxony, called Ludolphus, who immortalized his memory by founding the still flourishing Abbey of Gandersheim.* Such Dukes as these were certainly not at that time what we conceive

* The Abbey of Gandersheim is situated in a town of that name in the dominions of the Duke of Brunswick Wolfenbuttel, and is under his protection. It was founded in the year 848, and embraced the Lutheran persuasion in the sixteenth century. The foundation consists of an Abbess, who is a Princess of the Empire, and has a seat and a voice at the Diet; a Dean, and eleven noble Canonesses. They have no particular dress; but wear a cross of the order, enamelled black and red, on which are represented the instruments used at the crucifixion of our Saviour. On the top of it is a cluster of diamonds, and at the bottom, a Death's head, enamelled white. This cross is fastened to a broad watered ribbon, of a pale blue, diversified at the edges with narrow black stripes, and hanging from the right shoulder quite down below the waist to the left. The present Abbess is sister to the reigning Duke of Brunswick.—Busching's Geography.

ceive at present by German Dukes, who govern a country and people as hereditary regents, and exercise all the rights of sovereignty in their own name, and with their own territorial power. Many of these Dukes however soon began to feel themselves to be of such consequence, that it was not always in the power of the Kings to confine them merely to the office of a Governor, or prevent the son of a Duke sometimes from taking possession of his father's dutchy, without first waiting for the royal appointment.

Whatever the arrangements respecting the government of whole provinces might have been, necessity soon taught almost every possessor of an estate to make all possible provision for his own security; and who could blame them, when the government was no longer able to afford them protection from the attacks of foreign nations, who could daily rob them of their property, or ravage their lands, for taking every precaution, and adopting the best measures for placing themselves, their families, and their effects, in security? Every one therefore who had it in his power built himself a castle*, or fortified dwelling-place,

* A Burg, from whence many of the large towns derive their name, as Hamburg, Lunenburg, &c. and the English words Borough, Burgess, and Bury, an old mansion. The ruined castles which decorate the principal eminences in Germany, and have bid defiance, for so many ages, to the rude assaults of time, still stand as monuments of the barbarity of ancient times. They are generally

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place, with walls and gates, and if possible on a mountain; the more inaccessible it was, the better. If a Bishop, an Abbot, a Count, or a Dynast*, possessed a sufficient number of estates to enable him to grant some of them to others, he willingly gave parcels of land to Knights, who bound themselves by that tenure to serve him as vassals in the field against every attack; or Castellains, to garrison, and fight in case the castle was invaded or threatened, or else to open their own castles, in cases of necessity, to him and his dependents. By such means as these, many churches

generally situated on rocks or mountains which seem inaccessible either to friends or enemies, and adjoining some considerable river, as the Danube, the Rhine, the Elbe, the Oder, and the Weser; or else in the neighbourhood of some ancient public road, where their inhabitants had an opportunity of suddenly attacking and pillaging incautious travellers, or of defending themselves against the attacks of more powerful and ambitious neighbours. The ruined castles and towers of many of them are fine remains of antiquity, and have, particularly on the Rhine, a very romantic appearance.

* The word Dynast is formed from the Greek δυναστεια, of δυναστευω, "to be powerful," "to be king;" and is frequently mentioned in the ancient history of the Persians, Assyrians, Medes, &c. The title in the middle ages was similar to that of Imperial Baron, who had the government of a certain district of land. They were a part of the high nobility therefore, and immediate members of the Germanic body. We find the title of Baron in all European countries the inhabitants of which are of German or Northern extraction. Originally it is probable they were the younger sons of Princes, who had small territories allotted them for their support. The title of Dynast now exists no more.—Chambers's Encycl. &c.

churches and great families were enabled to ſave their property, and their ſtock of cattle, corn, and other effects, from the dangers of hoſtile invaſions. We cannot be ſurpriſed therefore, that when France and Germany were for this reaſon by degrees ſo crowded with caſtles on the mountains, bad conſequences were naturally to be expected, if the owners of them once thought proper to oppoſe the laws of government, or, by ſallying out, and committing depredations, diſturb the public tranquillity and ſafety. In fact, every caſtle was a ſort of fortreſs which could not be ſubdued againſt the will of the poſſeſſor, without a regular ſiege, and taking it by force. However equitable it was, according to the juſt principles of the law of nations, that none but the ſupreme power ſhould be at liberty to erect ſuch fortreſſes; yet, at that period, every one claimed the right who had it in his power. If it was once allowed, therefore, for a perſon to build a fortreſs, and take up arms in his own defence, how eaſy was it to proceed a ſtep further, and uſe them both in quarrels with their neighbours, or ſally out upon travellers who were paſſing by, attack and plunder them, and even carry them off as priſoners!

This ſeems to have been the real origin of the barbarous cuſtom of private war * in the middle ages, when

* In German FAUSTRECHT, a word ſignifying in that language the right by which every one thought himſelf entitled to defend himſelf againſt the attacks of his neighbours, and even fall upon them for their own advantage, without any regard to the authority of their Sovereign, or any court of judicature.

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when every one not only thought he had a right to have recourse to self-defence to procure himself justice by his own force, but nobody was secure from being attacked and plundered by one that was more powerful, or by several confederates, without any ground or reason. Kings might oppose this custom by their general laws, or enforce their authority in particular cases, as they pleased; but under such circumstances it was impossible to abolish it (*a*).

It is particularly remarkable that in those early times, when the danger and distress occasioned by the incursions of foreign enemies were almost universal, the Frankish Kings, notwithstanding their divisions, found it necessary to unite in the common cause, and convene particular assemblies to consult on the subject, in the years 847 and 851, at Mersen, on the Maes, and in 860 at Coblenz. Here the Kings experienced already what reason they had to be as much upon their guard against the custom of private war, as against the incursions of foreign enemies. They zealously and unanimously opposed therefore the practice of plundering, and other acts of violence, which the nobles began to look upon as legal actions established

(*a*) This we find, for instance, in a CAPITULAR of Charles, surnamed the Bald, in Baluzii *Capitul. Reg. Franc.* Tom. II. p. 195: "Expresse mandamus, ut quicumque istis temporibus "*castella et firmitates et bajas* sine nostro verbo fecerunt, calendis "Augusti omnes tales firmitates disfactas habeant, *quia vicini* "*et circum manentes et impedimenta sustinent*," &c. — Struben, Vol. V. p. 158.

eſtabliſhed by cuſtom; and threatened to puniſh the aggreſſors, by excommunicating them, or putting them under the ban * (*a*), in the name of God and of the King. The event however ſoon proved the inſufficiency of theſe threats, and that the evil only increaſed in virulence. It ſoon aroſe to ſuch a height, that all the national regulations were warlike, and only conſiſted in preparations for attack and defence, not merely in ſuch wars as were intereſting to the country in general, but for private attacks, and ſuch defence as was thought neceſſary by every individual. The eſſential prerogatives of the ſupreme power, therefore, to which the liberty of engaging in foreign wars, and judicially deciding differences, without allowing the ſubject to avenge his own cauſe, ought ſolely to belong, were ſoon forgotten. Inſtead of this, vaſſalage became the chief object of almoſt every nation. He alone was poſſeſſed of power and authority whoſe vaſſals were numerous, and whoſe caſtles

* The Ban implies a ſpiritual or temporal excommunication or outlawry, by which the perſon condemned is in the firſt caſe excluded from all Chriſtian privileges by the authority of the Clergy, and in the latter from his temporal poſſeſſions, and benefit derived from the laws. The word originally ſignified a public proclamation; and is ſtill in uſe in England, as in publiſhing the Ban of matrimony, &c.

(*a*) Conventus I. apud Marſnam a. 847, c. 6. Baluz. Tom. II. p. 42: "Ut *rapinæ et deprædationes*, quæ *quaſi jure legitimo* hac-"tenus factæ ſunt, penitus interdicantur," &c. *Adnunciatio Pacti Confluentini*, 860, c. 6. Baluz. Tom. II. p. 143: "De iſtis *rapinis et* "*deprædationibus*, quas jam *quaſi pro lege* multi *per conſuetudinem* "tenent, ab hoc die *de Dei banno* et *de noſtro verbo* bannimus," &c.

caſtles were well defended: he alone was reſpected who performed his duty as a vaſſal with the greateſt ability and bravery. This was the object of all their education; this exerciſed all the powers of their minds; and this almoſt alone connected the bonds of their ſociety. When a vaſſal had once performed the ſervice of his lord, they had no further concern in the affairs of each other. The vaſſal was then at liberty to act as he pleaſed; he was under no reſtraint with reſpect to his property, the management of his domeſtic concerns, the direction of his family, and particularly of his dependants, or his villains. In ſuch matters he was ſubject to no controul, and acknowledged no ſuperior power.

The liberty of thoſe who could already boaſt of being free, ſuch as Princes, Counts, and Barons, and every freeholder, or, to uſe the preſent mode of ſpeaking, the high and inferior nobility, roſe to the greateſt height, although it was at the ſame time unavoidably ſubject to abuſe. The ſituation therefore of that claſs of people which did not enjoy their liberty, the peaſants, who were by far the moſt numerous, and of the greateſt importance, was more particularly pitiable.

This evidently diminiſhed the power of the Crown. The Kings of courſe could undertake nothing of importance now without the conſent of the States. Even at the above-mentioned fraternal meetings of the Frankiſh Kings they ſaw themſelves under the

neceſſity

neceſſity of mutually promiſing not only to allow and protect each of their States in their reſpective rights and dignities, but to call for their advice in the buſineſs both of Church and State, and conſider them as co-adjutors and co-operators in national concerns (*a*). On account of this article, the treaty of Coblenz (*Pactum Confluentinum*), of the year 860, is conſidered by many as one of the firſt fundamental laws which laid the baſis of the conſtitution of the Germanic Empire, limited as it is by the States; though the article occurs in the ſame words at the preceding meeting held at Merſen in the year 851; ſo that the firſt ſource of it therefore may be traced nine years earlier.

In ſuch circumſtances, when military affairs were more the objects of the monaſteries, and ſoundations deſigned for the inſtruction of youth, than literature, the improvement of the nation was ſo little conſidered, that all the excellent inſtitutions, on the contrary, which were begun by Charlemagne, were ſoon entirely perverted, or rendered fruitleſs. It was with difficulty that thoſe who were devoted to an eccleſiaſtical life obtained ſufficient inſtruction in reading

(*a*) Conventus II. apud Marſnam, 851, cap. 6. Baluz. Tom. II. p. 46; and *Pactum Confluentinum*, 860, cap. 10. Baluz. Tom. II. p. 141: "Ut *noſtri fideles*, unusquiſque in ſuo ordine et ſtatu veraciter, *ſint de nobis ſecuri*—et illorum *communi conſilio*—ad reſtitutionem Eccleſiæ et ſtatum regni *adſenſum præbebimus*, in hoc ut illi—etiam ſint nobis fideles et obedientes, ac *veri adjutores atque cooperatores*," &c.

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ing, writing, and the Latin language, to perform the immediate duties of their office; and yet the advantage which even this procured them over thofe that were totally ignorant, contributed in no fmall degree to increafe the weight of the fpiritual over the fecular Eftate, which began from that period fo much to preponderate.

A circumftance which juft at this period, but incomparably more, and in fact beyond all expectation, afterwards contributed to this, was the publication of a book, which was no doubt the only one of the kind. It had been cuftomary, for feveral hundred years, for the learned to employ themfelves in collecting the Decrees of the ancient Synods of the Church, and fometimes the letters alfo from the Bifhops of Rome, into particular volumes. A certain Dionyfius Exiguus had publifhed fuch a collection of letters at Rome about the year 526, from Pope Siricius, who wrote in 385, down to Pope Anaftafius in 498. Ifidorus, Bifhop of Seville in Spain, who died in 636, renowned for his learning and merit, made a fimilar collection. An impoftor, at this time, about the middle of the ninth century, made ufe of his name to promote the circulation of a collection he had fabricated, which he pretended contained the letters of the Bifhops of Rome, not only from the year 385, but as far back as the year 93. The fubjects of them tended chiefly to prove, that the Bifhop of Rome was the fucceffor of the Apoftle Peter; that the keys of Heaven therefore

CHAP. VII.

fore were in his hands; and that the foundation of the Church reſted upon him, as Peter received his authority from Chriſt †; that all Biſhops and Miniſters of the Church, according to the expreſſion of the Prophet Zechariah, ſhould be honoured as the apple of God's eye (Zec. ii. 8); that all ſpiritual perſons, and their eſtates, ſhould be independent of all temporal power, and exempt from impoſts; that the juriſdiction, not only over the Clergy, but in ſuch matters where religion had influence, as matrimony, the adminiſtration of oaths, diſputes concerning tithes, &c. over all ſecular perſons, Princes as well as ſubjects, belonged ſolely to the Biſhops and Eccleſiaſtical Courts; that all Archbiſhops and Biſhops were only ſubordinate inſpectors of the Church, and ſubject to the Biſhop of Rome, from whom they derived all the power they enjoyed; that an appeal lay to Rome from all Archbiſhops and Biſhops; that the Pope alone had the right of depoſing Archbiſhops and Biſhops, and of appointing others in their ſtead; that it was his prerogative to excommunicate both Kings and Princes, and to declare them incapable of reigning; that the divine expreſſion in Jeremiah, i. 10. was to be applied to him—" See, I have this day ſet thee over " the nations, and over the kingdoms, to root out, " and to pull down, and to deſtroy, and to throw " down, to build, and to plant."

† Math. xvi. 18, &c.

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All theſe principles were attributed to the firſt Biſhops of Rome, as if they had been even in thoſe days univerſally acknowledged. The decrees of the Councils, likewiſe, were ſo repreſented, that by means of omiſſions, additions, or interpolations, the ſenſe of them appeared to correſpond with the principles above aſſerted. Thus, for inſtance, the twenty-eighth canon of the Council of Carthage ordained, that no appeal ſhould be made from the churches of Africa beyond the ſea; but here it was added, "except to the See of Rome." No leſs than fifty forged decrees were added to thoſe of the Council of Nice; and the ſenſe of other paſſages, in which the Patriarchs of Alexandria and Conſtantinople were placed upon an equality with the Biſhops of Rome, was totally reverſed by the inſertion of a negative.

It is probable that the author of this collection was a Biſhop, or ſome eccleſiaſtic of an inferior rank, who was diſſatisfied with the ſtrict diſcipline then prevailing in the Church; as it frequently happened that an Archbiſhop, either of his own accord, or with the concurrence of his ſuffragan Biſhops, impoſed the moſt ſevere injunctions in the provincial ſynods on the Biſhops and other clergy, againſt which no redreſs could be obtained. He could not have thought of a better method of remedying this, than by repreſenting the Biſhop of Rome as the ſupreme and univerſal head of the Chriſtian Church, and thus paving the way for appeals to be made to Rome from the ſentences of all the Archbiſhops and Biſhops, and even for

for complaints to be made againſt them there whenever it was neceſſary. The aſſertions by which this doctrine was maintained, were not entirely new; they had already been ſeparately advanced on ſeveral occaſions, though they were far from being conſidered as popular opinions. But they were new in the dreſs and connexion in which they now appeared; and beſides this, they were interwoven with other principles, which might lead to conſequences of a much more ſerious nature.

But how was ſuch a book as this to be brought into circulation? How could it be expected that the world, in ſucceeding ages, ſhould be deceived by ſuch a forgery? If, when this event happened, the age had been more enlightened, if thrones had been adorned by men of brighter underſtanding, or if the Sovereigns, aſſiſted by wiſer counſellors, had reigned in tranquillity and peace, it cannot be conceived poſſible that ſo palpable a forgery could have been circulated as genuine, and have undermined the whole conſtitution of the Church, and every Chriſtian State: but when nations were ſo enveloped in ignorance as the Franks were in the reigns of Lewis the Pious and his ſucceſſors—when the peace of the Sovereigns was diſturbed by perpetual commotions—in ſhort, in ſuch a period as that of the ninth and tenth centuries, much might be hazarded, which in any other circumſtances would have been totally impoſſible. The pretext under which the author attempted to conceal this artifice, was, that the book was lately recovered as a

BOOK I. treasure from the furtheſt part of Spain, that it was the work of the celebrated Iſidorus, who was ſtill in ſuch high reputation, and a collection that infinitely ſurpaſſed every other work of the kind. All this was particularly favourable to the author's deſign. A man whoſe conſcience did not ſcruple to palm ſo groſs an impoſition upon the world, would not heſitate to invent the particular circumſtances, that Riculphus, an Archbiſhop of Mentz, who died as early as the year 814 or 815, which ſeems to be long before the exiſtence of this counterfeit collection, procured the book from Spain, and conſidered it worthy of his approbation. In ſhort the author or promoters of the ſcheme contrived, by ſuch pretences as theſe, to diſperſe the collection. Even Hincmar, the Archbiſhop of Rheims, one of the moſt learned and ingenious prelates of his time, appears to have given credit to the ſtory of Riculphus (*a*). It even happened to himſelf, that a Biſhop of Soiſſons, who had been been condemned in the A. C. 863. year 863, at his provincial ſynod, appealed from his ſentence to Rome, where the appeal was willingly received upon the ground of the pretended collection of Iſidorus. Thus it not only came into uſe ſoon after its production; but on the expiration of a certain period, during which the affair experienced a ſhort interruption, this collection was at laſt ſo univerſally acknowledged as genuine, that the greateſt part

(*a*) Hincmarus Rhemensis, Opuſc. 33, cap. 24, "De "*libro collectarum epiſtolarum*, quem *de Hiſpania illatum Riculphus*, "*Epiſcopus Moguntinus*, in hujusmodi ſicut et in capitulis regiis "ſtudioſus, obtinuit, et *iſtas regiones ex illo repleri fecit*.

part of it was inserted in the papal code, which is still the source of the Catholic ecclesiastical law: and whole nations, and general councils of the Church, were unable to resist the intolerable consequences which have since proved such an oppression to humanity, and which might easily have been prevented if the eyes of the world had been open to discover the adulterated source from which this mischief derived its origin. This honour was reserved for a society of Protestant divines, who compiled a laborious work on ecclesiastical history, about the middle of the sixteenth century, under the title of "The Centuries of Magdeburg," in which the fabulous history of the work attributed to Isidorus was first exposed to the world. A refutation of this was attempted by Francis Turrian, a Jesuit; but in the year 1635 a book appeared upon the subject, written by David Blondel, which has never since been answered; and even the Catholic authors themselves have been obliged to confess that the work was spurious (*a*). Notwithstanding this, the greatest part of the Catholics in Germany still groan under a weight of grievances, which in reality only derive their origin from the pretended Isidorus.

(*a*) The best works upon this subject are, Spittler's History of the Canon Law, until the time of the pretended Isidorus—Halle, 1778; and what a Catholic classical author, Michael Ignatius Schmidt, wrote about the same time concerning it in his History of the Germans, Vol. II. p. 246. Vienna.

BOOK I. To return to the time when this pretended work of Iſidorus made its firſt appearance, and was diſperſed in the world; we ſhall find that this affair had conſiderable influence on an event on which depended even the ſucceſſion to a royal throne, and a great part of the following hiſtory.

King Lotharius the Second, from whom the name of Lorraine has been tranſmitted to a part of the country which was under his dominion, thought he had ſufficient reaſon for divorcing Thietberg his Queen. The Archbiſhops of Treves and Cologne declared their approbation of his conduct at a Synod at Metz. In conſequence of this, the King took another conſort, of the name of Waldrade, by whom he had a ſon called Hugo, who, as he had no ſon by Thietberg before, would have ſucceeded to his throne. His divorced Queen, however, appealed to Rome. The Pope admitted her cauſe, and not only annulled the ſentence of the Synod of Metz, but depoſed even the Archbiſhops of Treves and Cologne for oppoſing the appeal. He obliged the King likewiſe to deſert Waldrade again, and receive Thietberg as his Queen. Hugo, his ſon by Waldrade, could now no longer be conſidered as his heir; ſo that, on the death of Lotharius the Second, Lorraine became a vacant inheritance; inſtead of which, if there had been no pretended Iſidorus, a deſcendant of the above-mentioned Hugo would perhaps have been ſtill upon the throne, and continued the diviſion of

C. 864.

of the Frankiſh Empire in three parts, as it was made in the year 843, by the treaty of Verdun, inſtead of the preſent diviſion into Germany and France.

On the death of Lotharius the Second, which happened in the year 870, the kingdom of Lorraine, which was thus rendered vacant, was equally divided, towards the eaſt and weſt, between Lewis, ſurnamed the German, and Charles the Bald. This, however, was not of long duration; for after the death of theſe two, their ſons were involved in freſh diſſenſions; and in conſequence of theſe, the weſtern part of the kingdom of Lorraine was given up, by a new treaty in the year 880, by France to Germany; and the borders, therefore, of this country extended beyond the Rhine, as far as the four great rivers which form the boundaries of France. A. C. 870 A. C. 880

An important revolution happened at this period on the Rhine and Saone, when the eccleſiaſtical and ſecular States in that diſtrict of country, between the above-mentioned rivers and the mountains of Jura, not thinking themſelves ſufficiently protected by the Kings of France againſt the Norman depredations, thought proper in 879 to elect a King for themſelves, of the name of Boſo. This circumſtance was the occaſion of the countries now known by the names of Provence and Dauphiné not being then united to the Empire of Germany, but forming the diſtinct kingdom of Burgundy. A. C. 879

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Soon after this, the inhabitants of the countries on the other ſide of the mountains of Jura, now called Savoy and Swiſſerland, followed the example of their neighbours, and choſe Rudolphus, of the Guelphic family, for their King. Thus a Burgundian kingdom aroſe on each ſide of the mountains; but they were both ſoon afterwards united in the Guelphic family, and remained, after that time until the year 1033, under the common name of the Burgundian or Arelatic kingdom; and on the extinction of the male line of this Guelphic Burgundian Houſe, the whole country was united again to the Crown of Germany.

After the deceaſe of Lewis the German and Charles the Bald, both the Frankiſh Empires experienced in a ſhort time ſeveral ſucceſſive deaths, which occaſioned great revolutions. In Germany, Lewis ſurnamed the German, who died in 876, left three ſons, Carloman, Lewis the Younger, and Charles the Groſs, who divided Bavaria, Saxony, and Swabia: the youngeſt of theſe ſurvived his brothers, who died without any legitimate male iſſue. Charles the Bald died in France in 877. His ſon, Lewis the Stammerer, followed him in 879; but after his death a great conteſt aroſe concerning two ſons who were ſtill living, and were the offspring of two different marriages. Lewis the Stammerer had married his firſt wife, Anſgard, againſt the will of his father Charles the Bald, and at his requeſt divorced her, and married another of the name of

Adelheid,

Adelheid. The Pope refuſed to crown his new conſort, becauſe Anſgard was ſtill living, whom he would not acknowledge to be legally divorced. This Anſgard had two ſons, Lewis and Carloman; and after the death of her huſband, Adelheid produced a poſthumous child, called Charles the Simple. If the firſt marriage was legally diſſolved, the ſucceſſion certainly devolved on the ſon of Adelheid; but on the contrary, if the divorce was not a legal act, the ſons of the firſt marriage were entitled to the throne; and in that caſe Charles the Simple could have no pretenſions, becauſe his mother, during the life of the firſt Queen, never could have lived in lawful wedlock with Lewis. That the children of both marriages ſhould ſucceed, was impoſſible; for if thoſe of one were capable of ſucceeding, the other muſt be of courſe excluded. This is a matter of importance, even to the hiſtory of Germany, becauſe the queſtion, whether Charles the Simple, who was the laſt ſurviving heir of all the Carlovingians, could lay any claim to the German throne, depends upon it; as ſeveral writers, even in modern times, have inferred from thence, a pretended right of the Crown of France to that of Germany.

On this occaſion, France decided in favour of the two ſons by the firſt marriage, Lewis and Carloman, who ſucceeded to the throne, whilſt Charles the Simple was declared to be an illegitimate ſon, and his pretenſions totally rejected. Even upon the death

BOOK I. death of these Princes, which happened soon after their accession to the throne, without any issue, France, so far from acknowledging Charles the Simple as Sovereign, bestowed the crown upon Charles the Gross, who by this event united all Germany and Lorraine

A.C. 882. 884. in the year 882 in his own person, and in 884 succeeded to France, Italy, and the title of Emperor; so that his dominions were almost as extensive now as the monarchy of Charlemagne, except that the March of Spain, and the islands in the Mediterranean Sea, had in the course of time been separated from it.

The people both of France and Germany expected from the power of this extensive monarchy, which was in this manner again united, that some measures would be adopted to defend them from the dreadful incursions of the Normans; and every one had reason to join in the warmest wishes that these measures would be attended with success. A numerous army indeed assembled for the purpose, as the Normans had just at that period made an attack upon, and set fire to, the city of Treves; but Charles, instead of hazarding a decisive engagement, entered into a negociation of peace with Godfried, the Norman Prince; the result of which was, that the matter was accommodated, contrary to the general expectation, in a very disgraceful manner, by the promise of a considerable sum of money, and the surrender of a district of land in

Friesland,

Friesland. This proceeding raised such an universal murmur amongst the people, that every thing seemed to portend a revolution; and as the Merovingians had been formerly supplanted by the Carlovingians, so this race appeared, according to the law of retaliation, to be threatened by a similar fate in the person of Charles the Gross.

BOOK

BOOK II.

The first Period of the Middle Ages.

EXTINCTION OF THE CARLOVINGIAN RACE, AND SUCCESSION OF THE SAXON, FRANCONIAN, AND SWABIAN EMPERORS, DOWN TO THE YEAR 1235.

CHAP. I.

Extinction of the Carlovingian Race, and Commencement of the Reign of the Saxon Emperors.

888—919.

Accession of Arnulph to the throne, and end of the Carlovingian race, in the person of Charles the Gross—Lorraine continues united to Germany—Burgundy dismembered from the Empire, as well as France and Italy—Further successions to the throne of Germany—Lewis the Child, and Conrad the First—Decline of the Empire during this period, particularly occasioned by the predominating custom of private wars, and perpetual incursions of foreign enemies.

CARLOMAN, the eldest son of Lewis, surnamed the German, who in the partition of the empire with his brothers obtained Bavaria for his share, died without leaving any legitimate issue; but he had a natural

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tural ſon called Arnulph, whom he appointed Duke of Carinthia. This Arnulph ſerved in the army which was raiſed by Charles the Groſs againſt the Normans, but was quite averſe to a peace being concluded upon ſuch ignominious terms. Not long after this, in the year 887, a Diet was held at Tri- A. C. 887. bur, a place ſtill exiſting between Oppenheim and Mentz, in the territory of Darmſtadt, when Arnulph ſuddenly appearing at the head of a valiant army which he raiſed in Bavaria and Carinthia, was ſoon proclaimed King, which Charles the Groſs was unable to oppoſe. He did not, however, ſurvive this misfortune long, but died January the 12th, the enſuing year, and put an end to the legitimate male A. C. 888. line of the Carlovingian race. Charles the Simple, indeed, was ſtill in being; but the illegitimacy of his mother's marriage being objected againſt him, he was no longer regarded either in France or Germany.

All Germany unanimouſly acknowledged Arnulph; and according to the union of Lorraine and Germany in the year 880, he was of courſe acknowledged there likewiſe, without any oppoſition. The Burgundian kingdom alone, which was already eſtabliſhed on the weſtern ſide of the mountains of Jura, and that on the eaſtern ſide, which on this occaſion became independent, refuſed to ſubmit to his authority.

The

BOOK II.

The French, though they did not oppose the dethronement of Charles the Groſs, took no part in the advancement of Arnulph. They continued firm themſelves in their objection to Charles the Simple, and elected Count Odo, of Paris, their King, to whom they were already indebted for the ſafety of their capital at the time when it was beſieged by the Normans; and from this period to the preſent day, Germany and France have continued two diſtinct nations, independent of each other.

Berengar, Duke of Friaul, and Wido, Duke of Spoleto, contended for the government of Italy and the Imperial Crown; but Arnulph marched an army thither in the year 895, and obtained the dignity himſelf at Rome, though the advantages he otherwiſe gained were loſt by his return. Quite another party gained the ſuperiority; and Italy in general became ſo embroiled, that for ſeveral years together the connexion of Germany with the countries on the other ſide of the Alps entirely ceaſed.

This revolution occaſioned no immediate change in the internal political conſtitution of Germany itſelf. If Arnulph had enjoyed a longer life, and had left a flouriſhing poſterity in poſſeſſion of the throne, the whole conſtitution and form of government would doubtleſs have remained as it was at the time of the Carlovingians. Even his infant A. C. 900. ſon Lewis, ſurnamed the Child, was preferred to his

his paternal throne, rather than that the Crown, which had been hitherto hereditary, ſhould be worn by any but the reigning family which then enjoyed it; but by Lewis's early death, which happened without iſſue in the year 911, this family became extinct. Conrad the Firſt, who was elected King in his ſtead, died likewiſe without heirs Dec. 23, 918, after a reign of only ſix years; and the people again had recourſe to a free election, when the choice falling upon Henry the Firſt, a new line of Emperors, of Saxon extraction, reſtored the throne to a greater degree of ſtability.

CHAP. I.

A. C. 911.

A. C. 918.

A. C. 919.

The circumſtance of four Kings ſucceeding each other by election in the ſpace of thirty years, one of whom was a minor, another a ſtranger to peace, and a third oppreſſed by misfortunes, rendered the period which ſucceeded the fall of Charles the Groſs very unfavourable to the reformation of thoſe abuſes which had ſo viſibly contributed to the decline of the monarchy ſince the days of Charlemagne. On the contrary, a variety of other circumſtances concurred to ſtrengthen the evils in their growth.

The Clergy ſoon reaped increaſing advantages from the prevalence of the principles of Iſidorus, ſometimes by procuring a royal exemption from the authority of the Dukes and Counts, and ſometimes extraordinary privileges and conſiderable donations of every kind from the Crown. This made the ſecular more jealous of the ſpiritual Nobility,

and

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and was the cauſe of many dreadful private wars; though the offenders were frequently puniſhed with death, and their ſentence pronounced by the King in the Court of his Princes. But every effort of authority was ineffectual. The increaſing horrors of private war were neither aboliſhed nor reſtrained, but continued to ſpread their baneful influence.

To this may be added the perpetual depredations of the Normans, the incurſions of the Venedic nations, and the ſtill more dreadful annual invaſions of the Hungarians, who forced their way into the very heart of the country; and as the ſafety of every country depended upon the exertions made by the Dukes for its protection, their power was conſiderably augmented, whilſt the authority of the Crown was daily decreaſing.

What moſt ſenſibly affected the good King Conrad was, that during his ſhort reign he had to combat with three Dukes, without being able to reduce them to obedience. The Dutchy of Lorraine, by theſe contentions, was ſeparated for a conſiderable time from the Empire of Germany. The young Duke of Saxony began to look upon himſelf as an independent Sovereign; and even Bavaria itſelf was on the point of being torn from his dominions.

CHAPTER

CHAPTER II.

Henry I. 919—936.

Union of Bavaria and Lorraine with Germany preserved—Towns first built in the interior parts of the country—Distinction of rank occasioned afterwards by this circumstance—Origin of the castle of Misnia, and the Margraviate of Sleswic.

It seemed to be reserved for Henry I to reestablish in some degree the authority of the crown, which had suffered so great a decline. To preserve the connexion of Bavaria with the Empire, he made an inconsiderable sacrifice, in granting to the Dukes of that country the authority over the Bishops of it, which was before considered as a part of the royal power. Whether this was designed merely as a personal prerogative conferred on the Duke, who was then in power, or intended for all the succeeding Dukes of Bavaria, is a question which is still disputed, and particularly by the Bavarian and Salzburg writers (*a*). The union which had been formed between A. C. 91

(*a*) I have introduced in the "Analysis of the History of the Germanic Empire," p. 131, *y*, several passages relative to this subject from contemporary historians. The Bavarian writers appeal to the records of 926 and following years, when the Bishop of Freisingen and Archbishop of Salzburg obtained a confirmation of their liberty

BOOK II. Lorraine and Germany, in the years 923 and 935, was now reſtored, by more than one treaty with the King of France, to its former ſtate.

But we are principally indebted to this reign for the change which took place in the interior parts of Germany by the foundation of towns; for before this period, excepting the caſtles on the mountains, the ſeats of the nobility, and convents which hap-pened

liberty to trade, &c. from the Dukes of Bavaria. When King Henry held a ſynod at Erfurt in the year 932, Arnulph held a ſimilar one at Ratiſbon, and another at Dingelſingen, to conſult about the reſtoration of thoſe churches which had been deſtroyed by the Thuringian devaſtations; and rules were at the ſame time preſcribed for the conduct of the Biſhops and the other clergy. Arnulph at firſt aſſumed even the royal title; but, after the peace concluded with Henry I, he ſigned himſelf "*Divinâ clementiâ* "*Dux Baioariorum, et etiam adjacentium regionum.*" There are coins of Arnulph, and of his ſucceſſor Berthold, yet extant, with this inſcription: "*Arnulphus*, or *Bertholdus*, *Dux*;" and on the reverſe, "*Regina civitas.*" Theſe were the firſt princely coins in Germany, and perhaps the moſt ancient of any of the preſent reigning houſes in Europe. They were not coined in conſequence of any particular privilege granted by the Emperor, but by the Duke's own territorial authority. Otho the Great made the firſt encroachment upon the Ducal prerogatives, and perſuaded the Biſhops to favour his intereſts, in order to increaſe the royal power; though in a Chronicle even of the eleventh century (*Chron. Tagerus*, publiſhed by PETZ, Vol. III. Part 3, p. 494) we find the following paſſage: "Geraldus, cujus ſucceſſores *uſque* "*hodie* regni habent jura præter coronam. Henricus (Arnulpho) "pro pace epiſcopatus terræ ſuæ et abbatias *regio jure* juxta anti-"quum conceſſit."

LORI, Hiſt. of Bavaria, p. 246, 261, 263, 264.

pened to be ſurrounded with walls, there were only lonely farms and villages. A few people might poſſibly have erected ſome houſes in the neighbourhood of a caſtle or church; but all theſe places were open and defenceleſs. CHAP. II.

The mournful experience that ſo few were able, in ſuch ſituations, to make effectual proviſion againſt the increaſing diſtreſs occaſioned by the incurſions of foreign nations, firſt ſuggeſted the idea to Henry, that it would be more conducive to the public ſecurity if there were towns ſurrounded with walls, with towers and gates*; and not only large enough

* In this reſpect Germany has undergone but little alteration. Moſt of the ancient cities, and even inconſiderable towns, are ſurrounded with walls, towers, &c. which give them a ſingular and diſmal appearance. If the place is large enough to contain a garriſon, there is generally a guard at the gates; and all ſtrangers are interrogated reſpecting their profeſſion, deſtination, &c. In the territories of the King of Pruſſia this is ſo ſtrictly obſerved in the time of peace as well as war, that a ſtranger muſt not only write down his country, rank, profeſſion, route, &c. which is carried every evening to the commanding officer; but at night, in all the garriſon-towns, a ſoldier is ſent round to all the different inns, to know what ſtrangers remain. The ſmall Imperial towns imitate, at an humble diſtance, the precaution of greater Powers. A ſmall body of veteran militia, with their coats worn thread-bare, and their arms ruſted with diſuſe and age, are equally inquiſitive. If a traveller arrives after a certain hour in the evening, he muſt frequently wait, in the worſt of weather, till the keys of the gate are brought from his Worſhip the Burgomaſter.

In the ſeven years war, the ſmall Imperial city of Nordhauſen, when the King of Pruſſia demanded paſſage for his troops, returned him for anſwer, that their Senate was then ſitting, and not fully de-

BOOK II.

to contain a greater number of inhabitants, but capable of affording protection to their effects, and those of their neighbours who might take refuge there in times of necessity.

Any other motives than those of necessity would have availed but little to divest the people of their aversion to live in towns; but the experience of other advantages which this institution produced, soon taught them to change their opinion; and of course therefore the number of towns continually increased.

But how was it possible to accomplish this innovation at first? The method which Henry adopted was, that every ninth man should remove from the country, and settle in the towns, and that all public meetings should be held there; a plan which certainly merits the highest approbation. We have no particular account of any other regulation which might have been made, to encourage the population of the towns, and promote their trade; much less are we acquainted

termined whether they should side with the King of Prussia, or with the Emperor; upon which the King, without any further ceremony, decided the question for them, and supplied himself, at the expence of the town, with every thing necessary for his army. Many of the towns however which have formerly been strongly fortified, and stood sieges in several wars, are now no longer capable of defence; and the ramparts are converted into public walks; as in the Hanoverian dominions, at Hanover, Gottingen, &c.

acquainted with the number and ſituation of the particular towns then founded (*a*).

CHAP. II.

It is probable that many of them owed their origin to buildings which happened to be already in the neighbourhood of epiſcopal churches and cloiſters, or elſe adjoining caſtles which were ſurrounded by extenſive walls. The diviſion of the ſtreets muſt naturally have depended upon accident, by one houſe by degrees being added to another. Even where the towns were built entirely from the ground, one cannot be ſurpriſed that there was ſo little regularity obſerved, and ſo little application of that refined policy which we imagine to be requiſite in a town at preſent; partly as this hiſtory relates to an age of the groſſeſt ignorance, and partly becauſe there was only the ſhort period of nine years, during which Henry had made a truce with the Thuringians, allotted for the purpoſe. In ſuch circumſtances it is rather a wonder that ſo much was performed, and that a nation which was before ſo exceedingly averſe to this mode of living, could ſo ſoon be prevailed upon to reſide in towns; but the greateſt proof of this having really been the caſe was, that after the dangers which they were

expoſed

(*a*) SOEST, in Weſtphalia, is probably one of the firſt cities founded by Henry. At leaſt we find that place mentioned in a record of Otho the Great, of the year 962, where the words occur, "Actum in *Suoſacz.*" SCHATEN, *Annal. Paterborn.* Tom. I. p. 266. Next to this town, the moſt ancient are ſuppoſed to be, Quedlinburg, Nordhauſen, Duderſtädt, Merſeburg, &c.

BOOK II. to from the Thuringians were over, their number continually increaſed.

With reſpect to the manner of life of the inhabitants of theſe towns, and amongſt other things the particular diſtinction of rank which prevailed, we muſt not form our ideas of them from the ſtate of our towns at preſent, whoſe origin certainly cannot be derived from ſo early a period. Every one of the original inhabitants knew what rank he was of, and whether he was free or not. In the firſt generation it is probable that the people ſeldom married perſons of any other rank than their own. At that time the mere abode in a town was not a ſufficient reaſon for conſtituting a particular rank or order of men; and this is the cauſe that even in the preſent day there are noble families in many ancient cities, who have preſerved their rank almoſt from time immemorial*.

It was not till ſeveral generations afterwards that the inhabitants of cities, whoſe anceſtors were freemen, no longer ſcrupled to intermarry with perſons whoſe wealth and perſonal accompliſhments made them willingly forget that their anceſtors perhaps were originally ſlaves, or came firſt into the town in the capacity of menial ſervants.

In

* As at Augſburg, Nurenburg, &c. where the Nobles ſtill continue under the name of Patricians, and govern the city jointly with the other Council elected from the Commonalty.

CHAP. II.

In the ſame manner likewiſe the averſion which the people in general had to merchandiſe and mechanical employments was by degrees deſtroyed. Thoſe indeed who continued to keep up their houſes in the old ſtyle in the country, ſoon laid claim to precedency, becauſe they ſtill complied with the cuſtoms of their anceſtors, by principally occupying themſelves in the chaſe and war, and trading only in the produce of their lands and cattle. Theſe likewiſe were the only perſons who were appointed to the offices of the court, and performed the feudal duties, which the inhabitants of the towns were wholly excluded from. At laſt people were required to produce proof of the noble deſcent both of their paternal and maternal anceſtors, in religious foundations, and at tournaments. Hence we may conceive how the few people of the country whoſe liberty and birth otherwiſe entitled them to no ſuperiority over the inhabitants of towns, who were originally equally free, in a few centuries conſidered themſelves of a diſtinct rank from the burghers, and endeavoured to emulate the rank of thoſe independent families which had hitherto conſtituted the real nobility of Germany; though an eſſential difference has been always preſerved between this order of high nobility, and thoſe free families which conſtitute at preſent what is called the inferior nobility. On the other ſide the burghers, by virtue of the freedom which they originally inherited from their anceſtors, or elſe by obtaining their burgherſhip, or freedom of the town, remained as eſſentially diſtinct from the order of pea-

 ſants,

BOOK II. ſants, who were ſtill either in a ſtate of ſlavery *, or elſe groaned under the grievous hardſhips of villainage, and impoſts on their property. This was the origin of the four diſtinct ranks of people ſtill exiſting in Germany. The High Nobility, conſiſting of Princes, Counts, and Barons; the Inferior Nobility, who had anciently no other pretenſion to ſuperiority than their mere enjoyment of freedom; the order of Burghers; and laſtly, the Peaſants.

The contemporary writer, to whom we are indebted for the account of the towns founded by Henry, ſpeaking of the manner adopted to people them, by means

* In German LEIBEIGENE, bondmen, or in fact ſlaves. In England they were anciently called Villani, or villains, from the word *villa*; becauſe they were attached to the eſtates of the nobles in the country. Theſe unfortunate beings ſtill groan under the greateſt hardſhips in the northern governments of Europe, and are not yet entirely free in ſeveral parts of Germany. In moſt of the eſtates belonging to the nobility, they are ſtill obliged to perform certain ſervices for their Lords, ſuch as working themſelves, or uſing their cattle, ſo many days in the week, on their eſtates, &c. Where the feudal hardſhips exiſt in all their rigour, the poor dependents can call no property their own; but are themſelves, with their families and effects, wholly at their Lords diſpoſal. This ſtate of villainage, which Engliſhmen conſider as inconſiſtent with humanity, though the remains of it are ſtill viſible in the ſingular conditions of tenure of many of our copyhold eſtates, chiefly ſubſiſt in Mechlenburg, Holſtein, Pomerania, Luſatia, Weſtphalia, Heſſe, Swabia, the Palatinate and the Biſhoprick of Hildeſheim; though not every where in the ſame degree. Theſe hardſhips are moſt ſevere in the countries formerly inhabited by the Venedi, called now the WENDISCHEN LANDEN. Here the

means of taking every ninth man from the country (*a*), makes uſe of an expreſſion which ſome interpret as if the firſt inhabitants of the German towns had been only peaſants: but he expreſsly ſays, *milites agrarios*, which, according to the language of the ſucceeding times, muſt be tranſlated "country knights,*" or warriors who lived on their eſtates. The addition of the word *agrarius* was probably intended to diſtinguiſh ſuch knights or freeholders from thoſe who were obliged to perform military ſervice as vaſſals in the field, or elſe garriſon-duty in the caſtles, or the offices of the court as miniſters, juſt as at preſent the country gentlemen, LANDJUNKERS, are diſtinguiſhed from thoſe noblemen who are in offices at court, or in the army.

Beſides the great merit which Henry acquired by building towns, Germany is ſtill further indebted to

the poor peaſants have no property whatſoever, and no right of inheritance. They dare not even marry without their Lords conſent, and their children are obliged to work on their Lords domains for a certain number of years, without any reward for their labour. In Weſtphalia the hardſhips of villainage have been conſiderably leſſened; and in ſeveral other countries of Germany the owners of eſtates ſuffer their villains to redeem themſelves by the payment of a certain ſum of money, called LOSSGELD. The Emperor aboliſhed this ſpecies of ſlavery throughout his patrimonial territories in the year 1782; and the benevolent Margrave of Baden Baden, who neglects no opportunity of contributing to the happineſs of his ſubjects, ſoon afterwards followed his example.

(*a*) WITICHIND CORB. lib. i. "*ex agrariis militibus* nonum "quemque eligens in urbibus habitare fecit."

* RITTER VOM LANDE.

BOOK II. to him for placing the frontiers in greater ſecurity againſt the Venedi, by erecting the caſtle of Miſnia, and againſt the Normans, by appointing a Margrave on the other ſide of the Eider, in Sleſwic. By the erection of the laſt Margraviate, the northern borders of Germany were at the ſame time extended beyond the boundary eſtabliſhed by Charlemagne. It is only to be lamented, that Henry's ſon and ſucceſſor, Otho the Great, was too much dazzled by ambition and foreign temptations, to promote the further improvement of the internal ſtate of the Empire with equal zeal.

CHAPTER III.

Otho the Great. 936—974.

Remarkable occurrences on the ſucceſſion of Otho—Firſt traces of the indiviſibility of the Empire, and right of primogeniture—Origin of the prerogatives which were afterwards peculiar to the Archbiſhops of Mentz, Treves, Cologne, and the four ſecular high offices—The connexion revived with Rome and Italy—Effects of the revival of the Imperial title—Freſh conqueſts of the Venedic countries, and origin of eccleſiaſtical foundations there, particularly at Magdeburg, Hamburg, and Prague—Liberality towards the Clergy, and increaſe of their conſequence encouraged—State of the Dutchies at that period—Origin of the Counties Palatine—Various reaſons for the decline of the Empire which afterwards happened.

AT the ſucceſſion of Otho the Great to the throne, A. C. 936. we muſt not neglect to mention, that this was the firſt inſtance, where, of ſeveral ſons of a King, only one ſucceeded to the throne, inſtead of a partition being made, as in the reigns of the Carlovingians and Merovingians, and as amongſt the three ſons of Lewis the German, who divided the Empire into three different parts. A cuſtom ſeems to have been imperceptibly eſtabliſhed from the four laſt reigns, where Arnulph, Lewis the Child, Conrad I, and Henry I, governed the whole of Germany alone, as there are no traces to be met with of any fundamental

BOOK II.

mental law upon the ſubject; and from that period till the preſent day, no farther partition of the Empire has ever been thought of.

Even at that time Henry, Otho's younger brother, inſiſted not ſo much on a partition as a prior right of ſucceſſion to the throne, becauſe at the time of his birth his father was actually King; whereas, when Otho came into the world, he was only a Duke. This priority, however, the nation would not allow; though it could not yet be ſaid, that the right of primogeniture in the ſucceſſion to the throne was then acknowledged. It appears rather, from the ſequel of the hiſtory, that at every ſucceſſion to the throne, although the Crown was continued, according to the ancient political conſtitution of the Franks, in the royal family, yet the nation did not remain wholly without influence in the appointment of the perſon. Hence it ſoon became uſual for almoſt every father to take an opportunity, during his life-time, of previouſly ſecuring the ſucceſſion for his ſon. It is true, we cannot conſider this exactly in the ſame light as that which we now call the Election of a King of the Romans; but both unqueſtionably have ſome reference to each other. The indiviſibility of the throne was firſt eſtabliſhed in France, in 954, upon the death of King Lewis, who had two ſons; though Lotharius only ſucceeded to the throne. His younger brother, Charles, ſtill thought himſelf entitled to inſiſt upon a partition: he was obliged, however, not only to give way to his eldeſt brother and his ſon, but, after his death, likewiſe

likewife to Hugh Capet, the father of the race of all the fucceeding Kings of France. CHAP. III.

Otho's acceffion to the throne diftinguifhed itfelf further by this, that he did not decline the ceremony of coronation as his father had done, but let it take its full courfe with the ufual folemnities. This deferves, for this reafon only, to be noticed; becaufe, on this occafion, the firft traces might, though ftill very diftantly, be obferved of thofe Electoral privileges which afterwards became fo important.

The coronation was performed at Aix-la-Chapelle: the Archbifhop of Cologne, therefore, claimed the honour of performing it, becaufe Aix-la-Chapelle was in his diocefs. The Archbifhop of Treves, however, pretended that his Archbifhoprick was of greater antiquity than that of Cologne, and that therefore, in fuch a folemn tranfaction as this, he ought to have the precedency. At laft, the two Archbifhops, for this time, refigned the honour to the Archbifhop of Mentz. This hiftory is only remarkable for informing us, that even in thofe days the three Archbifhops of Mentz, Treves, and Cologne, contended for precedency at coronations. A difpute on this fubject lafted till very modern times. In the year 1658, it was fettled on its prefent footing; and amongft other things, that all the three Bifhops fhould affift in placing the crown upon the Emperor's head, although the real confecration

BOOK II.

tion is only performed by the Archbiſhop in whoſe dioceſs it happens; or elſe, alternately, either by the Archbiſhop of Mentz or Cologne. It is very extraordinary, that at the time of Otho the Great, only the three Archbiſhops of Mentz, Treves, and Cologne, were ambitious of the honour of crowning him; and that neither the Archbiſhop of Salzburg, nor thoſe of Bremen, Beſançon, and others, appeared as competitors for the honour, or partakers of it. It is therefore very probable that it proceeded from this circumſtance, that although others might be abſent from the election and coronation, theſe three were always obliged to be preſent, and on that account obtained ſuch great prerogatives, that they alone, of all the eccleſiaſtical States, retained a voice at the election; though it was certainly in their favour, that they might conſider themſelves as the original Archbiſhops of the Germanic Empire.

Nearly the ſame circumſtance occurred with reſpect to the great offices of the Court, which Otho appointed on his coronation days, when he kept an open table. Four Dukes were then diſtinguiſhed by ſuch charges as are at preſent aſcribed to the four court-offices of Marſhal, Chamberlain, Steward, and Cup-bearer. At that time theſe offices were not hereditary, though they became ſo afterwards; and ſoon after, theſe four principal Secular States, with the above-mentioned three Spiritual ones, appeared in the capacity of ſeven Electoral Princes.

There

CHAP. III.

There was no transaction during the reign of Otho which operated so much on the subsequent history, and in some measure retains its effect even to the present day, as the revival of the connexion which anciently subsisted between Rome and Italy. By the extinction of the Carlovingians this connexion had totally ceased. It appeared to be peculiar to the issue of Charlemagne, and not annexed to any of his dominions. Since the time of Arnulph, no Germanic King had passed the Alps. After various factions and troubles, Berengar II, whose mother was a daughter of Berengar I, at last became a Prince of the first consequence in Italy. Queen Adelheid, the widow of the late King Lotharius, who was by birth a Princess of Burgundy, persuaded Otho to undertake an expedition into Italy A. C. 951. against him; by which she not only obtained her liberty from her confinement at Canossa, but was afterwards married to him.

Berengar for this time continued King, but only upon condition that he should first receive his kingdom as a fief from Otho in Germany. The second expedition which Otho undertook to Italy, was at the instigation of Pope John XII, with the intention A. C. 960. of deposing Berengar again, on account of some complaints made against him, and of appropriating the Imperial Crown, as well as the Crown of Lombardy, to himself. He succeeded in both; and Otho was crowned in 961 at Milan, by the Archbishop there, and on the second of February 962, by Pope A. C. 962. John

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John XII, at Rome. Berengar on the contrary, after having for ſome time reſiſted in vain, was baniſhed at laſt to Bamberg. In another expedition to Rome, Otho procured his ſon, Otho II, to be crowned as his aſſociate in the empire.

Thus Otho had certainly the honour of procuring, like Charlemagne, the dignity of Roman Emperor, as well as the Crown of Lombardy, for himſelf and his Houſe; though at that time it could not be ſaid that any permanent connexion was entered into between Italy and Germany. Only in this reſpect Otho went ſtill a ſtep further than Charlemagne, in omitting his other titles, and at laſt only ſubſcribing himſelf Roman Emperor. This was at leaſt afterwards the occaſion of the general belief, that the dominions over which the Roman Emperor governed, muſt be the Roman Empire itſelf, without diſtinguiſhing between the powers which he poſſeſſed as Sovereign of the city of Rome and Lombardy, and what he properly had a right to as the head of the Germanic Empire. In this manner an ignorant perſon might imagine, that all the countries which the King of Pruſſia governed formed the kingdom of Pruſſia, without recollecting that the Electorate of Brandenburg, the Dutchies of Sileſia, Magdeburg, Pomerania, Cleve, &c. have properly nothing at all to do with the kingdom of Pruſſia, but that every one of theſe countries has its own particular conſtitution.

Otho and his ſucceſſor thought that they could now claim, not only all the prerogatives which Charlemagne formerly enjoyed, but even whatever elſe was at any time claimed by the ancient Roman Emperors, without diſtinction. Amongſt other things, they began very early to adopt the expreſſions which occur in poetry, or in the language of flattery, of Rome being the Miſtreſs, and the Roman Emperor Lord of the world. The Othos ſeem to have thought, that as Roman Emperors they could exerciſe a certain ſovereignty over foreign Kings as well as over the Princes of Germany. Another idea ſoon aroſe, that the whole of Chriſtendom, conſidered as one eccleſiaſtical ſociety, had one viſible ſpiritual head; and that in the ſame manner, therefore, all Chriſtian nations and ſtates might have one temporal head, which, on account of the protection afforded to the Church by the Roman Emperor, no one elſe had ſo good a claim to: at laſt they adduced the interpretation of the four kingdoms, in the prophecy of Daniel, the laſt of which was "to break all the reſt in pieces, and "deſtroy them, but ſtand itſelf for ever." *

According to ſuch repreſentations, it is the leſs ſurpriſing that from this period other kingdoms and nations, otherwiſe independent, were required to acknowledge a degree of ſupremacy of the Germanic Emperors over them; as was ſucceſſively the caſe with Denmark, Poland, and Hungary; and on ſome

* Dan. ii. v. 31—45.

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occasions the Emperors even boasted that Spain, France, and England, did not deny their sovereignty (*a*). In fact, this gave rise to a particular law amongst the nations of the middle ages, which placed all Christian kingdoms and countries in a similar relation to the Roman Emperor, as every individual Christian church stood towards the Roman church; so that exactly in the same manner as Archbishops and Bishops depended on the Pope, Princes and Kings were in a certain measure dependent on the Emperor. In some cases this was not without its effect, as the sequel of the history for several centuries together proves, by the crusades as they are called, and the succeeding wars with the Turks, as well as at general councils of the Church, conferring of dignities, the use of Imperial Notaries, &c. This was often however the occasion of such usurpations, that the Emperors were frequently raised to an intoxicating height, without sufficient power to support their situation.

Amongst other things Otho revived, by a particular treaty with the clergy and people of Rome, the ancient Carlovingian principle, that no Pope should be elected and consecrated without the Emperor's approbation. On the other hand he made a solemn promise, confirmed by an oath, to support the Roman church and its governors with all his power, and

(*a*) This, at least, is the language of the Emperor Conrad III, in a letter to the Greek Emperor.—Otho Frising. de Fried. I. lib. 1. cap. 23. in Muratori Scriptor. Ital. Tom. VI, p. 657.

and to enact no ordinance which concerned the Pope, or Romans, without the Pope's concurrence.

This new connexion obliged Otho at last to make several journeys to Italy, and spend many years there; which, after that, almost all his successors were under the necessity of doing. Germany, owing to the distance and long absence of its Sovereign, was frequently involved in confusion; and those institutions which were requisite to enlighten and improve the nation, were rendered abortive by neglect: not to mention the blood which was afterwards shed in Italy, and the new causes of misunderstanding which arose between the Church and State, and at last broke out, attended by the most unhappy consequences for Germany, as well as for every other temporal power.

Otho's enterprises in the countries of the Venedi were apparently much more advantageous for Germany. In a war which broke out in the very first years of his reign, he reduced Bohemia and Lower Lusatia to obedience. He thought at last that he had established himself firmly in the other Venedic countries on the right shore of the Elbe, by following the example of Charlemagne. As he had confirmed his conquests by the appointment of Bishops in Saxony, Otho was in hopes of strengthening the bond of union with the Venedic countries, by providing them with Bishops under the inspection of some able Archbishop. For the see of this Archbishoprick he fixed upon Magdeburg,

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* Or Editha, the daughter of Edward the Elder, King of England.

† The pallium is a pontifical ornament worn by Popes, Patriarchs, Primates, and Metropolitans of the Roman Church, over their other garments, as a ſign of their juriſdiction. It is in the form of a band or fillet, three fingers broad, and encompaſſes the ſhoulder, whence by ſome authors it is called *ſuperhumerale:* it has pendants, or ſtrings about a palm long, both before and behind, with little laminæ of lead rounded at the extremes, and covered with black ſilk, with four red croſſes. The pallium is made of white wool, ſhorn off two fine lambs, which the nuns of St. Agnes offer every year on the day of her feaſt, at the ſinging of the maſs, *Agnus Dei.* The lambs are received by two Canons of the Church, who

grant of in 962 from Pope John XII, and in 967 from John XIII. The Benedictines were allotted another place in the neighbourhood, where the cloister of Bergen now is, which is the remains of that foundation. The new Archbishop of Magdeburg had six Venedic Bishopricks immediately under his direction, Misnia, Merseburg, Zeiz, Havelberg, Brandenburg, and Posen; whence we may at the same time judge, what an extent of country was at that time subject to the dominion of Germany. Thus Otho extended likewise the district of the Archbishoprick of Hamburg, by establishing, after an expedition

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K 3 which

who deliver them into the hands of the Apostolical Subdeacons, to whom belongs the feeding of them, and shearing them in season; and who alone have the right of making the palliums; which, when made, they lay over the bodies of St. Peter and St. Paul, in the grand altar of their church, making prayers over them all night, according to the form prescribed for that purpose in the Roman ceremonial. Some, with Eusebius, will have the pallium to have been introduced by Pope Linus, adding, that as the ephod was the mark of the pontifical authority in the Jewish synagogue, so is the pallium in the Christian church. Others have observed, that there is no mention of it before 336. The Pope pretends to the sole right of conferring the pallium, though some Patriarchs have granted it to their Suffragans, having first received it themselves from the Roman See. Anciently the Pope used to send the pallium to certain of his Diocesan Bishops, on whom he laid a good part of his authority, and who were a kind of collaterals to him, as the Patricii were to the Emperors. Anciently they went to Rome to seek the pallium in person; afterwards it was sent by the Pope's Legates; at last the custom was introduced, of sending persons express to demand it, with the form *instanter, instantius, instantissime.*

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which he undertook against Harold, King of Denmark, in defence of the Margraviate of Slefwic, three new Bifhopricks at Slefwic, Ripen, and Arhaus, which, as well as a new Bifhoprick of Altenburg in Wagria, which was afterwards removed to Lubeck, became fubordinate to the Archbifhoprick of Hamburg. In this reign likewife Duke Boleflaus II, of Bohemia, founded a Bifhoprick at Prague, under the infpection of the Archbifhop of Mentz.

All thefe new foundations gave reafon to expect the moft rapid and folid progrefs of Chriftianity, and that the Venedic countries would in general become more enlightened

By the popifh canon law, a Metropolitan, till he has received the pallium, cannot confecrate Bifhops or Churches, may not be called Archbifhop, &c. Upon a tranflation he muft have the pallium afrefh, and till then cannot hold a Synod, nor perform any of his archiepifcopal functions. The pallium was anciently interred with the perfon. The ufe of the pallium is reftrained to certain feafons and occafions; none but the Pope has the right of wearing it always, and in all places.

The Pope fometimes fends it to Bifhops of his own accord, and has fometimes given the right to particular churches. Amongft the Greeks all the Bifhops wear the pallium.

In ancient records we find mention made of another pallium, which was a long garment fpread over with croffes. Tertullian fays it was the diftinguifhing garment of the Chriftians, that of the Heathens being called *Toga*.

Chambers's Encyclopædia, Art. PALLIUM.

It is not improbable that the cloth called in England the Pall, which is laid over the corpfe, and fupported by friends at a funeral, derived its name from the cuftom of burying the Pallium or mantle with the dead.

enlightened and cultivated. This was afterwards however often interrupted; and the countries lying nearer the Baltic, ſuch as Mecklenburg and Pomerania, had no ſhare at all in any of theſe foundations.

Otho moreover was not only particularly liberal in his preſents to the ſpiritual foundations, and indulged them with a number of privileges, but held the Archbiſhops and Biſhops in particular honour. This he might have been induced to by various reaſons. In the firſt place, they were the only perſons whom he could employ in buſineſs, when any writings were neceſſary to be executed, or publicly read. We may judge of the ignorance of the laity of thoſe days, by Otho himſelf, after the death of his firſt wife, firſt learning a little Latin, and of courſe reading and writing; for at that time they did not write in any other language. All public buſineſs was tranſacted under the inſpection of the Archbiſhop who happened to be at court, or in whoſe dioceſs the affair originated. Thus the Archbiſhop of Mentz did not at that time occupy the office of Arch-chancellor alone; but the ſame office was held likewiſe by the Archbiſhop of Treves, Cologne, or Salzburg, if they were at court, or when buſineſs occurred in their diſtricts, though it was not long before the Archbiſhop of Mentz procured the office of Arch-chancellor in the affairs of Germany entirely for himſelf.

On the other ſide, the Dukes and Counts began to arrogate in their territories more than the quality

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lity of mere governors, as they were according to the political conſtitution of the Franks in the time of the Carlovingians, ſeemed to allow them. It was ſoon evident that they attempted to make their offices hereditary, and to intermix the crown lands, which they ought only to have enjoyed the revenues of, with their own property. In this reſpect the Archbiſhops and Biſhops were every where made uſe of by the Crown as a counterbalance. The Dukes were ſoon ſo ſenſible of this, that they looked upon the Biſhops of their country as ſpies from the Court. Theſe, on the contrary, roſe to ſuch a ſtate of grandeur, that it was even found neceſſary, in order to check their arrogance, to order, that no Biſhop ſhould attend a viſitation of the church with more than fifty horſes in his train.

All this was in favour of the Crown, becauſe the Archbiſhops and Biſhops were moſtly creatures of the Court. Both the Archbiſhops and Biſhops indeed ought to have been freely elected by the clergy and people, and afterwards inveſted by the King with the ring and croſier: but it was not uncommon to refuſe inveſtiture to a perſon who was diſagreeable to the Court; and they were often nominated by the Court alone, without any previous election whatever. The greater therefore the influence was of thoſe who were advanced to the higheſt ſpiritual offices, the more certain the Court might be of their vigilance and ſupport againſt the laity, when theſe encroached too far.

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In this reign an important revolution took place in the Dutchies themſelves. In the former reign, the Dutchy of Saxony continued annexed to the perſon of the King; but Otho's ambition made him think it inconſiſtent with his dignity to hold it. In the very firſt years of his reign he appointed a particular Prince in Saxony, Herman Billung, whoſe male iſſue, as long as it flouriſhed, kept poſſeſſion of that Dutchy. This family poſſeſſed at the ſame time, as their private hereditary eſtate, the caſtle and territory of Lunenburg, which afterwards devolved to a daughter of that Houſe, who was married into the Guelphic family, and thus brought the country of Lunenburg firſt into the poſſeſſion of the anceſtors of the Houſe of Hanover and Brunſwick *.

Otho had given the Dutchy of Swabia to his own ſon, and the Dutchy of Lorraine to his ſon-in-law; but he depoſed them both again for entering into a rebellion againſt him. He intruſted the direction of the Dutchy of Lorraine even to an eccleſiaſtic, Bruno, his own brother, and Archbiſhop of Cologne, who at laſt thought proper, in order to break the power of the Dutchy, to divide Lorraine into two parts, as ſince that time Upper and Lower Lorraine have always been diſtinguiſhed; and at laſt only the former preſerved the name.

In

* Wielfhild, the eldeſt daughter of Magnus, the laſt Duke of the race of Billung, was married to Henry the Black, the father of Henry the Proud.

In Bavaria, the eldeſt ſon of Arnulph the Wicked endeavoured to ſeize the Dutchy as his hereditary property. Otho however deprived him of it, and gave it firſt to his brother, Berthold, and afterwards to his own brother Henry. Thus Otho adopted it as a general maxim, to fill the principal ſecular and ſpiritual offices with Princes of his own Houſe whenever he had an opportunity (*a*). And this was the criſis when the relation between the Crown and the Dutchies was to be finally determined.

In order to prevent the Dukes from growing too powerful, there was at this time another ſingular inſtitution eſtabliſhed, in the appointment of Counts Palatine, as they were called. Under this name, according to the Carlovingian conſtitution, were underſtood only ſuch perſons who held the office of a Judge at Court, and therefore either adminiſtered juſtice under the King's own eye, or elſe as his repreſentatives. Counts Palatine were appointed in the provinces, whoſe office was to take cognizance of ſuch cauſes as were exempted from the power of the Dukes and Counts, in the capacity of Royal Judges, to occupy their office in their abſence, and to undertake the management of the royal revenues. The Dukes, however, were directed to undertake no

(*a*) Otho, in the year 966, provided for his daughter Matilda, born 955, by granting her the Abbey of Quedlinburg, which was founded at the beginning of his reign. This Abbey, as well as that of Ganderſheim, came afterwards to Otho's grand-daughters.—Hanoverian Magazine, 1785, p. 737, &c.

no matters of moment without their approbation. Such Counts Palatine as these were afterwards appointed in Lorraine, Saxony, Swabia, and Bavaria (*a*). This office, as well as that of the Dukes, soon became hereditary; and at last it was united in every Dutchy with the Ducal family. The office of the Counts Palatine of Lorraine, or of the Rhine, as they are called, continued in particular families; of which one of our first houses at present bears the name, although the original and real import of the office of Count Palatine has been long buried in oblivion. So far, however, the dignity and rank has been preserved, that the title of Count Palatine, as continued in the Palatinate House alone, is esteemed equal to the title of Duke, and therefore reckoned much superior to the simple title of Count.

As much as all these measures concurred in the due support of the grand work of restoring the Carlovingian political constitution where it was possible, in the parts which were decayed, yet we may easily conceive how much these designs must naturally fail, when the means which had been adopted afterwards proved abortive. Of this I have just given an instance above, in the case of

(*a*) In Bavaria, after the death of Arnulph the Wicked, on the 12th of June, 937, Otho appointed his second son, Arnulph, to be Count Palatine, not only as Chief Judge, but Inspector-general of the Royal Domains in Bavaria, which he in a great measure, at that time, deprived Duke Berthold of, and appropriated to himself. These Counts Palatine continued in Bavaria till 1249.

Lori's Hist. of Bavaria, p. 264.

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of the Counts Palatine, and ſhall ſoon have occaſion further to remark, what a different turn the influence of the Court afterwards took with reſpect to the Archbiſhopricks and Biſhopricks.

The greateſt misfortune was, that the whole nation reverted into the profoundeſt ignorance, owing to the decline of the ſcholaſtic inſtitutions begun by Charlemagne. This was the occaſion of the cuſtom of private wars taking deeper root; and manners, ſuch as were before unheard of, ſoon threw a veil over every idea of morality. Even cauſes, which ought in every well-regulated State to be determined by a legal hearing of both parties, an impartial examination of evidence, and a proper application of the laws by judgment and juſtice, were in a great meaſure left to the iſſue of the ſword. Even the offices of legiſlation were by theſe means ſupplanted. The queſtion, for inſtance, was diſputed, Whether grandſons ſhould be equally intitled to their grandfather's inheritance as his children who were ſtill living? It was propoſed to appoint commiſſioners to examine it; but Otho himſelf thought it more proper that the affair ſhould be decided by ſingle combat; and the champion of the grandchildren obtained the victory (*a*).

Otho even ſuffered the honour of his own daughter, which a Count had calumniated, to ſtand the teſt of a duel,

(*a*) The event of ſuch a combat was looked upon as the judgment of God. Otho might as well have left the cauſe to be decided by lot. According to the opinion of thoſe times, this was thought of leſs

a duel, which fortunately ended in her favour. In civil cauſes likewiſe, where money or other property was concerned, they preferred leaving the affair to the iſſue of the ſword, rather than run the danger of perjury, which they were otherwiſe apprehenſive of. In ſuch circumſtances we cannot be ſurpriſed that the attachment to ſelf-defence became ſo great, that innumerable hoſtilities and murders naturally enſued.

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leſs conſequence than complying with an arbitrary ſentence which might tend to derogate from the introduced autonomy.

Thus Möſer juſtifies the proceedings of Otho the Great, in the Berlin Monthly Magazine for October 1785, p. 289.

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CHAPTER IV.

The Three last Saxon Emperors, Otho II, Otho III, and Henry II. 974—1024.

No alteration at this period in the Conſtitution—Two Dutchies united in one perſon—The union of Lorraine and Germany again confirmed—Otho III, his minority, and guardianſhip committed to his mother and grandmother—Actual union of the title of Roman Emperor with the Empire of Germany—Henry II's new treaties with the See of Rome—Origin of the Biſhoprick of Bamburg.

DURING the two ſucceeding reigns of the ſon and grandſon of Otho the Great, who had the ſame name, and each of whom had ſecured his ſucceſſion to the throne during the life of his father, no alteration was made in the conſtitution of Germany.

Of the reign of Otho II, which laſted but nine years, this ſingle circumſtance merits obſervation; that his nephew Otho, who in 973 was Duke of Swabia, in the year 976 got the Dutchy of Bavaria; a circumſtance which is on this account of conſequence, becauſe it proves that it was not at that time unconſtitutional for a Prince to poſſeſs two Dutchies at once, which was afterwards aſſerted to the prejudice of the Guelphic family.

A war

A war which broke out afresh between Otho II and Lotharius King of France, the principal object of which was the design of the French Crown upon Lorraine, was put an end to in the year 980, by a solemn treaty of peace, concluded by those Monarchs at a personal conference. We have no authentic contemporary accounts of the conditions of the peace: the event, however, has proved, that the Kings of France have since, on every occasion, acknowledged the Kings of Germany as the legitimate possessors of all Lorraine. So far the contents of the former treaties of 843 and 880 were again confirmed, that we must always derive the origin of the boundaries of this part of the Germanic Empire from this period.

In the beginning of the reign of Otho III, one circumstance appeared, which was very inconsistent with the present constitution of Germany. During the minority of the King, his mother Theophania, and after her death his grandmother Adelheid, acted as guardians of the government. There had been hitherto no example of this in the history of Germany; and only one has occurred since, during the minority of Henry IV. When the Crown became elective, this could no longer be expected. Our late Imperial laws, in case a minor Prince should obtain the crown, place the administration in the hands of the Vicars of the Empire (*a*); but

(*a*) Capitulation of Joseph I, 1690, Art. 7. Ditto of Charles VII and Joseph II, Art. 13, Par. 9.

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but in ſuch a manner that all public buſineſs muſt be tranſacted in his name.

According to all appearances a new agreement was made between Otho III and Pope Gregory V, who was the grandſon of his father's ſiſter, that the head of the Germanic Empire ſhould always be intitled in future to the kingdom of Lombardy, as well as to the dignity of Roman Emperor, without their being annexed as formerly to any particular family. From this period, therefore, there was a real connexion of the Imperial Crown with that of Germany for ever. This at laſt occaſioned ſome commotion; but, notwithſtanding repeated oppoſition, the point was carried. That Gregory however, on this occaſion, limited the number of electors for every future election of an Emperor to ſeven, is evidently a fiction of ſucceeding times.

Henry II had already met with ſome oppoſition in Italy, becauſe he was not the iſſue, but only a collateral relation of the Othos, and was indebted to a free election for his acceſſion to the throne. The greateſt difficulties were occaſioned by Arduin of Ivrea, who conteſted the Crown of Lombardy; but after his death he gained the quiet poſſeſſion of it. The conditions which he made however with Pope Benedict VIII, were more diſadvantageous. This Pope preſented him with a golden apple, as an emblem of the globe, to ſhow him that, as Roman Emperor, he might flatter himſelf

himself with the idea that he was Sovereign of the world, but at the same time to remind him from whose hands he received this prerogative: and it was then established, that no Prince should assume the title of Emperor in future, who was not first found qualified, and crowned, by the Pope. Thus Henry was the first who subscribed himself, before he received the Imperial crown, only King of the Romans, and after his coronation, Roman Emperor. On the other side, instead of the election of the Popes not being acknowledged as legal without the approbation of the Emperor, as was the case in the time of Charlemagne and Otho the Great, their election was exempted now from that restriction.

The Papal See had an influence likewise, during this reign, in the ecclesiastical state of Germany, which was not so observable before; as the Bishoprick of Bamberg was founded more by the authority of the Pope than of the Emperor himself; not as the Emperors and Kings had hitherto founded Bishopricks where they had made a conquest of new countries, and introduced Christianity; but in the middle of Germany, where the ecclesiastical constitution had been long established: so that it was necessary to form this new diocess from those of other Bishops. Besides this, the new Bishoprick obtained the prerogative of preceding all the other former German Bishopricks in rank, as a Bishoprick immediately subject to the Pope, and exempt from all Archi-episcopal power; as even now, at the Diet of the

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the Empire, it claims the place immediately next to the Archbiſhops themſelves. It is ſtill more remarkable, that thoſe electors who conſider it an honour to diſcharge the four high offices of the Empire at the Emperor's coronation, are the hereditary officers of the Biſhop of Bamberg's Court, though they inveſt other noble families with this honour.

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CHAPTER V.

Conrad II. 1024—1039.

A new King elected on the extinction of the Saxon race; but Germany was not yet, on account of that circumſtance, an elective Empire—Manner of proceeding on that occaſion to election—Connexion maintained with Italy—Union of the Burgundian and Germanic Empires—Connexion with Italy on a different footing—Loſs of Sleſwic, and the former boundary of the river Eider again eſtabliſhed.

AFTER the death of Henry II, none of the reigning Saxon family remained. It was a perfectly free election, therefore, which raiſed Conrad II to the throne; though Germany could not be ſaid at that period to be on that account an elective Empire. On the contrary, a reigning family was again eſtabliſhed from this Ducal Houſe of Franconia, though the father took care to ſecure the election for his ſon, during his life, in the ſame manner as was done by the two firſt Othos, eſpecially when there was any danger of a minority, or any other circumſtances interfering to prevent it.

With reſpect to the manner in which Conrad II was elected, the only thing to be remarked, is,

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that the election was not made by ſeven electors, which muſt have been the caſe if the above-mentioned fiction that Gregory V appointed them, had any foundation. He was, on the contrary, elected by the whole multitude, who aſſembled between Mentz and Worms on both ſhores of the Rhine*; the election

* Wippo, a writer of the middle ages, who was chaplain to Conrad II, gives the following account of that Emperor's election: "The death of Henry II diſturbed the tranquillity and good "order of the Empire. Every good man regretted the event, "but the wicked rejoiced in the proſpect of general confuſion. "As the Emperor left no ſons, all the Secular Princes, who "were powerful, made open attempts to ſecure the firſt offices "of ſtate for themſelves, and not by ſtratagem but force. Diſ-"ſenſion univerſally prevailed; and frequently even murder, "plunder, and conflagration, from which the moſt diſtinguiſhed "perſons could ſcarcely ſecure themſelves. The Empreſs Cu-"nigunda, though now a widow, her brother Dietrich, Biſhop "of Mentz, and Rezilo, Duke of Bavaria, aſſumed the reins "of government; but the other Dukes and Biſhops were re-"ſolved to prevent the danger which might ariſe from the "want of a Supreme Head of the Empire. The firſt meaſure "they adopted for this purpoſe was to adviſe with each other "by means of letters and envoys; and then they appointed "the time and place for a general aſſembly of the people. "Between the cities of Mentz and Worms is an extenſive "plain, where the greateſt numbers may conveniently aſſemble; "and in the neighbourhood there are ſeveral iſlands, very well "adapted to private conference. Here the moſt diſtinguiſhed "people of the Empire aſſembled, and I may ſay its very ſtrength "and members. They encamped on both ſides of the Rhine, "which divides France from Germany. From the German "ſide came the Saxons, and their neighbours the Sclavi, Eaſt "Franks, the Norici or Auſtrians, and the Alemanni; from "France, the Ripuarii from the Lower Rhine, and the people "of

CHAP. V.

tion therefore was not yet at Frankfort on the Main, though even at that time the Archbiſhop of Mentz is ſaid to have given his voice before the others.

Conrad II met with the ſame difficulties which Henry II did in Italy; but he preſerved on this

occaſion

" of Lorraine from the Upper Rhine. It was for a long " time a conteſted point now, who was moſt worthy of the " throne? One was thought too inexperienced, and another " too far advanced in years. One had not diſtinguiſhed him- " ſelf by any glorious actions, and another had made himſelf " unpopular by his pride. At laſt a few were ſelected, two " of whom were approved of as candidates; and it was agreed " to determine the election, after a ſtrict enquiry into their " reſpective merits, in favour of one of theſe. The Princes " fixed upon were the elder and younger Conrads, who were " of very noble birth, and natives of Germany. Their fathers " were brothers, and their grandfather Otho Duke of Franconia. " The conteſt between the two couſins was not eaſily decided; " for although the bravery and eloquence of the eldeſt diſpoſed " the whole aſſembly in their hearts to give their voices in his " favour, yet a dread of the other's power impoſed for ſome " time a general ſilence. In this ſtate of ſuſpenſe the eldeſt " Conrad exhibited a proof of his good ſenſe, in perſuading his " relation to agree to make a mutual promiſe, to be ſatisfied " with the event of the election, whatever it ſhould be; by which, " as he had already obſerved the inclination of the Princes, he " ſecured his concurrence. As ſoon as the younger Conrad " had accepted of this propoſal, his couſin publicly kiſſed him; " and this being obſerved by the aſſembly, they concluded of " courſe that a friendſhip ſubſiſted between them, and pro- " ceeded to election. The Princes took their ſeats, and the " whole concourſe of people formed a circle around them. The " Archbiſhop of Mentz, whoſe privilege it was to deliver his " opinion firſt, as ſoon as the queſtion was propoſed by the " people, cheerfully declared Conrad II his Lord and King, and

" that

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occasion the former connexion between Germany and Italy, against all opposition; which has continued, even to the present day, so that the right of a King, once legally elected in Germany to the Crowns of Rome and Lombardy, has been never since disputed. When Conrad called the inhabitants of Pavia to account for destroying the royal palace there, after the death of Henry II, they pretended to excuse themselves by saying, that after Henry's death they were without a King, and therefore could not be guilty of high-treason; but Conrad soon taught them, that, though the King was dead, the Empire still remained, a principle which has been admitted ever since.

Conrad embraced another excellent opportunity of laying the Germanic Empire under obligation to him, which offered itself on the death of Rudolphus III, when the male line of the House of Burgundy became

"that he made choice of him as the Sovereign and Protector "of his country; and this opinion was unanimously consented "to by the other Archbishops, Bishops, and Clergy. The "younger Conrad, upon this, retired for a short time, with "the people of Lorraine; but he soon returned, and acknow-"ledged his cousin, with much warmth, his Lord and King. "The King then took him by the hand, and seated him "next to him; after which all the Princes successively ac-"knowledged their Sovereign in the same words. The people "expressed their approbation with shouts of joy. The general "exclamation was, that Conrad alone was worthy of the ho-"nour, that he alone should be their King; and they insisted "that he should be anointed, and crowned immediately."

HEGEWISCH's Characters and Pictures of the Manners of the Middle Ages.—Leip. 1786, p. 87.

became extinct. Certain agreements had been made concerning this event in the former reign; but they appeared to relate more to the perſonal deſcent of Henry II from Rudolphus's ſiſter, than to any real connexion between Germany and Burgundy. Conrad was obliged, in order to confirm this agreement in favour of himſelf and Germany, to have recourſe to arms: and he was fortunate enough to obtain the poſſeſſion of Burgundy, and keep it, notwithſtanding all the attempts to the contrary. By this the frontiers of the Germanic Empire were again extended in that part as far as the Rhone and Saone, which were the rivers already fixed upon as the boundaries of the Empire of the Weſt Franks, by the treaty of Verdun in 843. Not only the preſent country of Swiſſerland, therefore, and Savoy, but Provence and Dauphiné, the county of Burgundy, Montbelliard, and other adjacent territories, were from this time united with Germany. This union, however, was not ſuch a one as that of Lombardy, which from its firſt conqueſt was always treated as a ſubject country, and took no part in the national aſſemblies, and other privileges as natives; whilſt the States of the Burgundian kingdom, on the contrary, were looked upon as perfectly equal with the other Imperial States of Germany, and were allowed a ſeat and voice at the Diets of the Empire, as well as all other national privileges in the ſame degree. Thus there was no diſtinction between the Burgundian and German States, or the former States of Lorraine;

 and

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and there were Archbishops, Bishops, and other Prelates, as well as Dukes, Margraves, Counts Palatine and other Counts, Imperial and other towns, the same as in the other parts of Germany.

If we take a retrospective view of the original extent of the Frankish Monarchy, we shall find, that the addition both of Burgundy and Lorraine was in fact only a re-union of several countries, which had formerly been separated. It was the more natural therefore that these people should be treated by the other Germans as if they were restored to the former bonds of fraternity, and the advantages which might be expected from their being reunited were more solid. These advantages were on this account uncommonly great; because by these means the German territory was extended towards the south as far as the Mediterranean Sea, and towards the north as far as the Northern Ocean and the Baltic. Toulon and Marseilles became at that time German harbours; and it is to be lamented that these advantages have not continued to the present day, since the course of time has partly transferred the most important countries of that neighbourhood into the hands of the French, and partly given them their freedom and independence, as has been the case in the first respect with Provence, Dauphiné, and Franche-Comté, and in the latter with Swisserland. The Diet however still reckons the Bishop of Basil, the

the Dutchy of Savoy, the princely county* of Montbelliard, and, nominally, even the Archbiſhop of Beſançon, amongſt the Members of the College of Princes.

The connexion between Italy and Germany is in every reſpect totally different. The ſituation of the country, the climate, and the original diſtinction of the people, make the union by no means ſo natural as with Burgundy and Lorraine. But with reſpect to its political relation, amongſt other things there is this ſtriking difference, that neither an Archbiſhop, a Duke of Milan, nor any other Italian Prince, has ever had a ſeat and voice at the Diet. The King of Sardinia may ſend an envoy to Ratiſbon, in right of Savoy, but not on account of Piedmont, becauſe the former belongs to Burgundy and the latter to Lombardy.

When we conſider that Conrad II acquired the kingdom of Burgundy, we may excuſe the loſs he occaſioned by ſuffering the Germanic Empire to be confined on the other ſide, during his reign, to narrower limits. Canute, the powerful King of Denmark, who at that time poſſeſſed the three kingdoms of Denmark, Norway, and England, prevailed upon Conrad to reſtore to him the Margraviate of Sleſwic;

* GEFURSTETEGRASCCHAFT, a county, the poſſeſſor of which was not originally, but created afterwards, a Prince.

BOOK II.

wic; and therefore the Eider became once more the northern boundary of Germany, as it had been already in the time of Charlemagne. This is ſtill ſo accurately obſerved, that at Rendſburg, on this ſide the Eider, in the ſervice of the church they pray for the Emperor, which they do not, in that part of the city which is on the other ſide of the river.

THE LIBRARY OF WILBERFORCE'S ...

CHAPTER VI.

Henry III. 1039—1056.

The borders of Germany extended towards Hungary—New attempts to re-eftablifh the Imperial authority—The dependence of the election of the Popes upon the Imperial Court revived, as well as the election of Bifhops—Interruption of the hereditary right of fucceffion to the Dutchies.

AN event which caufed Henry III to undertake an expedition to Hungary, is ftill worthy of our notice, becaufe the river Leitha was on this occafion fixed upon as the boundary between Auftria and Hungary; by which a diftrict of land was added to the weftern part of the Germanic Empire, from the Kahlenberg mountain near Vienna, as far as the river above mentioned.

But this reign was chiefly diftinguifhed by very different plans, both with refpect to the Church and the Temporal Supremacy, which feemed capable of raifing the Imperial power to its higheft pinnacle, if a total change of circumftances had not precipitated it ftill lower than it was before.

Henry took advantage of the threefold divifion then fubfifting in the Church refpecting the Papal chair,

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chair; for, by revoking the ordinance of Henry II, the Papal election was restored to its former footing; and it was resolved that no one should be chosen without the approbation of the Emperor. The Papal chair therefore was four times successively occupied by German Bishops, and appeared almost wholly reduced to a perfect dependence upon the Imperial Court.

According to the constitution which had hitherto subsisted, the Archbishops and Bishops ought to be elected by the Clergy and the People, and afterwards invested by the Emperor with the ring and crosier. But the elections were seldom made contrary to the inclination of the Imperial Court, and the person was in general previously fixed upon who was to expect the investiture. Thus the Emperor reserved it in his power to confer ecclesiastical offices only upon those whom he fixed upon himself, and promoted his own adherents, whose prerogatives he could make a profitable use of to support the Imperial rights, and act as a counterpoise to the Secular States, whom Henry endeavoured to reduce to a very different condition.

It had hitherto frequently happened, that Dutchies were transmitted by inheritance from father to son, and dealt with as if they were private personal property. Henry however now left whole Dutchies without possessors for many years together, according to his pleasure; which was particularly the case with

with Carinthia; or elſe he appointed Dukes, and depoſed them, as ſuited his humour. He deprived the Duke of Bavaria of his Dutchy, and gave it to his own ſon, an infant Prince; and after his death, a circumſtance till then unprecedented, he gave it to his own conſort. One Duke, who was at the ſame time in poſſeſſion of Upper and Lower Lorraine, wiſhed to leave the Dutchies to his two ſons: his wiſh however was in vain; for Henry appointed Frederick of Luxemburg Duke of Lower Lorraine; and of Upper Lorraine, Albert of Alſace. From the nephew of the latter all the ſucceeding Dukes of Lorraine deſcended, in a direct male line, till the father and ſon, the late Emperors, Francis and Joſeph II.

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CHAPTER VII.

Events preparatory to great Revolutions, both in the Church and State, in the Reign of Henry IV. 1056—1106.

The united efforts of the Popes, and the malcontents of Germany, during the minority of Henry IV, to reſtrain the Imperial power—The previous conduct of Hildebrand, afterwards called Gregory VII—The dependence of the Papal election upon the Emperor deſtroyed—Attack upon the Imperial prerogative of inveſting Biſhops with the ring and croſier—The marriage of the Clergy prohibited—Excommunication of the Emperors introduced—Deſign of changing Germany into an elective Monarchy—Plan for eſtabliſhing a new law of nations, and public law; of two viſible heads of the world, the Pope and Emperor, but the Popes above all—The great influence of the cruſades which now firſt came into practice upon theſe plans.

ALL the attempts of Henry III to raiſe the Imperial power to its former height, were rendered totally abortive by his premature deceaſe; when Henry IV, his ſon, a minor Prince, ſucceeded to the throne. His mother, who was his guardian, was unable to prevent a revolution, which in a great meaſure eſtabliſhed the conſtitution as it exiſts at preſent. This revolution was produced by two powerful ſprings, which ſometimes acted alternately, and

and ſometimes in conjunction with each other. One of theſe had its origin at Rome, the other amongſt the malcontents of Germany: but both contributed, though by oppoſite means, ultimately to the ſame object; which was to reduce the Imperial power to much narrower limits.

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The Iſidorian principles had not yet been generally propagated. Their perfect eſtabliſhment ſeemed reſerved for a man who was at this period living at Rome, and who carried them even far beyond their original deſign, by endeavouring to make the Holy See, as well as all Archbiſhops and Biſhops without exception, and the whole body of the Clergy, independent of the Emperor and all temporal power; to place on the contrary the whole ſecular ſtate, from the peaſant to the monarch, in the moſt abject ſubjection to the ſpiritual power. This was the grand object of the deſigns which Hildebrand had long concerted, when he was at work behind the ſcenes as the counſellor of other Popes; till he at laſt aſcended the Pontific throne himſelf, and put a finiſhing hand to his former machinations in the character of Gregory VII.

The firſt meaſure adopted for the accompliſhment of this deſign, related to the election of the Popes. In order to bring this entirely into the hands of the Clergy, a decree was previouſly iſſued in the year 1059, which opened the way for the election of the Popes being no longer the act of the people and

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and the whole body of the clergy aſſembled at Rome, but only of the Cardinals, as thoſe eccleſiaſtics were afterwards called who belonged as Biſhops to that particular dioceſs, or ſtood in the ſame relation to the principal Catholic Church as the Canons to the Archiepiſcopal or Epiſcopal Churches. They could not entirely deny the prerogatives which every Emperor, according to the ancient conſtitution, had at an election of a Pope; but they put it up on this footing, that every Emperor ought to obtain them for his own perſon, as a particular indulgence from the Holy See. The minority of Henry IV, and other circumſtances of thoſe times, afforded too many temptations to endeavour to fill the Papal chair on this occaſion without the approbation of the Imperial Court; an attempt which, notwithſtanding the oppoſition it met with, immediately ſucceeded. The Dowager Empreſs, Agnes, indeed, ſet up another Pope, Honorius II, againſt Alexander II, who had been thus elected; but he was obliged to yield to his opponent, for the Prince was carried off from his mother by ſtratagem, and the Empreſs diveſted of the Regency *.

In

* Several of the moſt diſtinguiſhed people of the Empire laid a plan amongſt themſelves to take the Prince out of the hands of the Empreſs, and deprive her of the Regency, whatever difficulties might attend it. An entertainment which happened to be given at Kaiſerwerth on the Rhine, offered them the moſt favourable opportunity of accompliſhing their deſign. As ſoon as dinner was over, Hanno, Archbiſhop of Cologne, enticed the Prince to follow him into a veſſel which was juſt built, and where he told him

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In order to ſet other archiepiſcopal and epiſcopal offices at liberty from every ſort of influence which the temporal powers had on their appointments, the cuſtom of purchaſing them, an abuſe which had long prevailed, became the ſubject of complaint; and this ſimony was forbid on pain of forfeiting the benefices. Soon afterwards all inveſtitures by the ring and croſier were poſitively prohibited; at the ſame time all the clergy were forbid to marry, which was certainly the moſt effectual plan of keeping the whole eccleſiaſtical eſtate free from all connexion with the ſecular. Before this period none took a vow of celibacy but the monks, and people of particular religious orders. Other eccleſiaſtics, ſuch as Biſhops, Pariſh Prieſts, Canons, or other members of religious foundations, notwithſtanding many ancient and late ordinances, frequently could not be prevented from marrying, or from indulging themſelves in the ſociety of miſtreſſes.

him there was ſomething particularly worthy of his notice. As ſoon as the Prince was on board, the ſailors, who had previouſly received private inſtructions, puſhed out with all their force into the river, and reached the oppoſite bank. The Prince, obſerving this, gave himſelf up for loſt, and was ſo exceedingly frightened, that in his firſt ſurpriſe he leaped directly into the Rhine, and would undoubtedly have been drowned, if Count Ecbert, of Brunſwick, had not courageouſly ſprung in after him, and ſaved him at the hazard of his life. They endeavoured afterwards to keep his ſpirits up by careſſing him as much as poſſible, and hurried him away to the city of Cologne. The Empreſs herſelf afterwards retired to a convent in Italy.

Schmidt's Hiſtory of Germany, Vol. III, p. 43.

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Notwithſtanding the oppoſition which was now made to Hildebrand's plan of requiring all the clergy to take an irrevocable vow of celibacy, yet at laſt it ſucceeded according to his wiſhes. By this the great hierarchical ſtructure was fully completed, becauſe now an eccleſiaſtic, whatever order he happened to be of, could have no greater intereſt in the world than to take every advantage of the ſuperiority of his ſituation during his life-time. He had now no further reaſon to provide for a family and legitimate iſſue. No ſecular magiſtracy could afford him any further aſſiſtance. The higher, on the contrary, the eccleſiaſtical eſtate in general could be raiſed, the more he might flatter himſelf with the probability of being himſelf exalted. If eccleſiaſtics of particular orders had hitherto been dead to the world, and only connected with their own fraternities, this was the caſe now with the clergy in general, without any diſtinction whatever.

The event has but too evidently ſhown how much this circumſtance has conduced to render this whole body more firmly connected under its common head. If a ſoldier feels himſelf intereſted when the military of his country is increaſed, or treated with greater reſpect, this is nothing in compariſon to the intereſt which an eccleſiaſtic takes in the common advantages of his profeſſion; to which, when circumſtances oppoſe, he will make no ſcruple of ſacrificing the intereſt even of his parents and relations.

lations. As ſoon as he thinks himſelf obliged to conſider the Church and State in the ſame relation to each other as the ſoul and body, or eternity and time, he muſt neceſſarily eſteem the welfare of the Church a much dearer object than that of the State, and ſacrifice the latter to the former with the beſt intention. But what could eſtabliſh a ſtronger barrier between the Church and State, than the univerſal celibacy of the clergy, which muſt neceſſarily tear aſunder even the natural bonds of conſanguinity, not to mention that there was no power exiſting now in the government of proportionable weight to preſerve a counterpoiſe againſt it?

The denunciation of eccleſiaſtical anathemas was an event ſtill more important, as it tended to ſtamp a greater validity on the meaſures already adopted. Henry IV was the firſt of all the Germanic Emperors againſt whom this was put in execution*.

In

* The humiliating circumſtances which Henry was reduced to by the Pope's pronouncing the anathema againſt him, are almoſt beyond conception. Such was the ignorance and bigotry of this unenlightened age, that the very Princes whom Henry had inveſted with power refuſed to aſſiſt their Sovereign. His only hope now was, to ſubmit to the mercy of the Pope, and ſolicit abſolution: he reſolved therefore upon a journey to Italy, in the middle of a ſevere winter, in the year 1077. The Princes were aware of his deſign, and endeavoured to prevent his journey by occupying all the different paſſes. Henry therefore was reduced to the neceſſity of travelling, with his wife and infant child, over the mountainous country of Savoy; and there his own mother refuſed him a paſſage, till he promiſed to grant her five Italian Biſhopricks,

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In other circumſtances it would perhaps have made but little impreſſion upon him; but Gregory VII had recourſe very artfully to this expedient at a time when the greateſt part of Germany was incenſed againſt him; partly as the Saxons in general had no real affection to the Frankiſh government, and partly as mutual ſuſpicions had begun already to break out in open fermentation. The conſequence of this was a civil war, which was commenced by a public declaration, that another Prince ſhould be raiſed to the throne by a Papal Nuncio, inſtead

Biſhopricks, which he at laſt compromiſed by ceding a piece of land in Burgundy. As the winter was very ſevere, the journey over the mountains of Savoy was one of the moſt difficult imaginable. The Empreſs herſelf was obliged to be wrapped in an ox's hide, and let down the hills, which were covered with ice and ſnow. Henry was better received in Italy than he expected; but his heart was too full of his ſufferings in Germany, to be prevailed upon to deviate from his firſt deſign; and nothing could ſatisfy him but abſolution from the Pope's anathema. Gregory was at that time on his way to Germany, pleaſed with the idea of having crowns and ſceptres at command. Hearing that Henry was arrived in Italy, he thought it moſt prudent to ſecure his perſon, and therefore paid a viſit to the celebrated Princeſs Matilda, who was in the ſtrong caſtle of Canoſſa. This Princeſs had long been his favourite, and her faith and property was at his diſpoſal. Henry knew the intereſt ſhe had with the Pope, and requeſted her to intercede with his Holineſs for him, which Matilda promiſed to do. Gregory, at firſt, was not to be moved, and refuſed either a conference or reconciliation; and determined to have the matter ſettled in Germany, where he wiſhed to go. At laſt however he ſuffered the Emperor to be admitted into the court-yard at Canoſſa, but in the habit of a penitent, a coarſe woollen ſhirt, and bare-footed. As ſoon as

inſtead of Henry IV, who was under ſentence of excommunication from the Church, and therefore incapable of reigning. At the ſame time it was publicly declared, that no reigning family ſhould be entitled to the throne in future; but that whenever a vacancy happened, even if the crown ſhould deſcend from a father to his ſon, the latter ſhould not obtain it by right of inheritance, but by a free election; in ſhort, that every ſhadow of an hereditary right ſhould ceaſe from this period, and that the Germanic, as well as the Roman Empire, ſhould become a perfectly free elective government.

as he entered, the gates were ſhut; and the Emperor now found himſelf in the outer court of the caſtle entirely alone, in the above-deſcribed condition, almoſt naked, expoſed to the moſt inclement weather, and ignorant of his future fate. He was ſuffered to wait three days in this ſituation before the Pope would condeſcend to ſee him. The very domeſtics of the caſtle were moved with pity. Gregory himſelf writes, that thoſe who were preſent told him to his face, that his conduct ſavoured more the barbarity and cruelty of a tyrant, than of Apoſtolic ſeriouſneſs. Matilda, with her eyes ſtreaming with tears, intreated the Pope to mitigate the ſeverity of his conduct; and Henry only requeſted that he might be ſuffered to return. At laſt, on the fourth day, he ordered him to appear before him, and haughtily abſolved him from the ban; but upon theſe conditions, that he ſhould appear at the time appointed him, to hear his doom, whether he was to continue to wear the Imperial diadem or not; that in the mean time he ſhould renounce all the honours of royalty, receive no revenue but what was abſolutely neceſſary for his ſupport; that he ſhould abſolve his ſubjects from their oaths of allegiance, give up his counſellors who were excommunicated, and never oppoſe the Pope again; and that, if he ſhould again be confirmed as King, he ſhould continue faithful and obedient.—Schmidt's Hiſtory of Germany, Vol. III, p. 97.

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It was evident that the ſucceſs of theſe plans would not only increaſe the power of the Church, but be very advantageous alſo to the intereſt of the Germanic Princes, by weakening the authority of the Emperor: and from theſe motives it was natural for them to afford each other the moſt friendly aid.

The Emperor might now be allowed to indulge his imagination, and, like the ancient Roman Emperors, flatter himſelf, that in the character of their ſucceſſor he was the Sovereign of the world. Hence a plauſible doctrine aroſe, that God had ordained two viſible heads of the world; a ſpiritual one over all Archbiſhops, Biſhops, and the ſubordinate Clergy, and a temporal one over all Kings and Princes. At the ſame time it muſt not be forgot, that all the ſecular ſtood in the ſame relation to the ſpiritual power, as the body to the ſoul, time to eternity, or the moon to the ſun. Thus at laſt every poſſible degree of human power was concentered in the Roman Biſhop, or Pope(*a*), which was the title he now claimed as peculiar to himſelf.

All

(*a*) The name of Pope was common before this period to every Biſhop. Gregory however claimed it excluſively as his own; and an author of that age even uſed the expreſſion, that it was equally as blaſphemous to apply the word POPE in the plural number as the name of GOD himſelf.—Spittler's Eccleſ. Hiſt. p. 220, ſecond edit. A propoſal to introduce the title of Prince Biſhop of Rome, may be found in Schlözer's Political Journal, Book V, Nº 19, p. 265—274, well worthy of peruſal.

CHAP. VII.

All theſe deſigns were certainly too vaſt and extenſive to be fully accompliſhed by the ſame ſimple means, or in a ſhort ſpace of time; but whatever means there were which could lead to the deſired object of the intereſted party, there were none equal to thoſe which preſented themſelves before the concluſion of the reign of Henry IV, in the celebrated cruſades.

Scarcely any thing can be ſuppoſed to deviate more from genuine Chriſtianity, which teaches us to worſhip God in ſpirit and in truth, than the idea that it would be more pleaſing to God to perform his worſhip in one place in preference to another, and that arms ſhould be taken up againſt infidel nations, merely to reſcue the ſpot from their power where Chriſt had been viſible on earth. An idea however had long prevailed, that pilgrimages to places which were rendered ſacred by the reſidence of Saints, or memory of miracles, muſt be particularly agreeable to God, and that mankind could render themſelves more meritorious in his ſight if they took up their ſwords againſt infidels in defence of his honour. We cannot be ſurpriſed then that thouſands of the Chriſtians of Germany, and other parts of Europe, went on pilgimages to Paleſtine, to perform their devotions in Bethlehem, Nazareth, and Jeruſalem, where Chriſt had lived and ſuffered; and that, as the cruſaders were expoſed to various difficulties, and met with many obſtacles from a nation lately ſettled in the country, they marched in ſuch

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prodigious troops, that in leſs than two hundred years above ſix millions of people thronged to the Holy Land, ſcarcely any of whom returned.

When we reflect on this ſubject, and more minutely examine the cauſes which produced ſuch effects, not only upon the conſtitution of Germany, but of every other nation in Europe, we ſhall find, that the firſt principle by which theſe enthuſiaſts were actuated, was the idea of their not being engaged in a war now, which concerned the diſputes between one nation and another, or the claim of a country which was to be enforced as the mere worldly and temporal concern of a greater or leſs number of people, but in a war in which they were to fight for the cauſe of God and Chriſt, and a war which had only ſpiritual objects and eternal rewards in view. Hence they drew this concluſion, that if this holy war, which was carried on in the cauſe of God, came in colliſion with any obligation or connexion that was merely human, God was certainly to be obeyed in preference to man; that neither magiſtracy therefore, vaſſalage, bondage, profeſſion, nor vow, nor the relation between a ſovereign and his ſubjects, parents and their children, huſband and wife, or creditor and debtor, ought lawfully to detain them from it.

It was moreover pretended, that this war was not conducted under the command of any ſecular power, but by order of the Vicar of Chriſt, and under

under his ſupreme direction. Thus the Pope acquired the power of giving law to every nation in Chriſtendom, and of removing Emperors, Kings, Princes, and Nobles, as often as their preſence oppoſed any of the deſigns of the Papal See; and what could be o more importance to him than the government of all the ſecular powers being thus veſted in his hands, and an opportunity of enfeebling not only the authority of Kings and Princes, but of depriving whole nations and ſtates of their ſtrength by draining the countries of their choiceſt inhabitants?

On the other ſide, theſe expeditions to the Holy Land were certainly productive in the end of the moſt beneficial conſequences: the great communication which they opened between the weſtern and eaſtern countries, was the cauſe of the diffuſion of more knowledge, introduced the arts into Europe, and held out new tempations, and new objects for the encouragement of navigation and commerce. But theſe were only accidental effects, and very foreign to the principal deſign of the cruſades: they appeared at a diſtant period, and were produced according to the general conduct of Divine Providence, whoſe attribute it is, contrary to all expectation, frequently to bring good out of evil. At all events, thoſe who were benefited by theſe advantages, purchaſed them very dearly.

It does not appear that all theſe effects were produced at once, either in the reign of Henry IV, or

or at any other time; but like moſt of the revolutions in nature, they appeared gradually, and almoſt imperceptibly. The operative principle however did not remain inactive; but one political revolution followed another, as the courſe of time and circumſtances contributed to bring them to maturity.

CHAPTER

CHAPTER VIII.

The Effects of great Revolutions in the Reign of Henry V; first with respect to the Church. 1106—1125.

CONCORDATE between Henry V and Calixtus II; by virtue of which the King loses his right of investing with the ring and crosier, but retains the prerogative of investing the Bishops after their election with the sceptre, and of deciding contested elections—The Emperor afterwards deprived of the last prerogative by stratagem—The right of electing Bishops at last exclusively confined to the Chapters, who had now given up their monastic life; and after the introduction of the proofs of their descent, consisted chiefly of Noblemen—They begin now to propose capitulations to the Bishops, and govern during a vacancy of the Sees—Thus Bishopricks and Prebends become chiefly the provision for the high and inferior Nobility—Similar changes in the monastic discipline—New orders of monks—Ecclesiastical orders of knighthood.

AMONGST the various schemes which had hitherto been agitated, and which had only been productive of discord, the first which came to a decision, was an agreement or CONCORDATE, concluded in the year 1122, between the Emperor Henry V and Pope Calixtus II, concerning the investiture of Bishops; an agreement which ought in justice still to be considered as the rule for determining the prerogatives of the Emperor as well as of the Pope, A. C. 1122.

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Pope, in the appointments to the Bishopricks of Germany. In fact this CONCORDATE must still be looked upon as one of the first fundamental laws which have preserved their efficacy down to the present day. On this account it is worthy of a further investigation, though it is not now enforced according to its original meaning.

The Emperor was obliged entirely to resign the investiture with the ring and crosier, which were spiritual emblems of a Bishop's being married to the Church, and nursing his flock with the care of a shepherd (*a*); and from that time to the present day, neither the Emperor, nor any other Catholic secular power, has ever regained this prerogative; but as the Germanic Prelates are at the same time in possession of territories and regal prerogatives, which they hold as fiefs from the Emperor, every ELECTED BISHOP ought to receive the investiture by means of a sceptre (*b*): I say, ELECTED BISHOP; for there ought to be a free election in every Bishoprick; and it is one of the Emperor's prerogatives, which ought to be preserved, to see every election performed in his presence (as on this account it is still customary, when there is an election of a Bishop, for the Emperor to send an Envoy to be

(*a*) "Ego Henricus—*dimitto*—(it is said) *omnem investituram* "*per annulum et baculum*, et concedo in omnibus ecclesiis—fieri "*electionem et liberam consecrationem*."

(*b*) "*Electus*—regalia per sceptrum a te recipiat," as Calixtus expressed himself to Henry V.

be preſent at the ceremony); and the Emperor ought to have the right of deciſion, with the concurrence of the Archbiſhop, and the other Biſhops of the province, in caſe of a conteſted election (*a*). CHAP. VIII.

The words ERWEHLTER BISCHOF (elected Biſhop) are for this reaſon particularly important, becauſe it was neceſſary for every Biſhop to be confirmed by the Pope after election; and before this ceremony he was not allowed the title of Biſhop, but only that of Biſhop elect, or conciſely, ERWEHLTER, *electus*. When it was ſaid, therefore, that an elected Biſhop was to apply to the Emperor for inveſtiture, it muſt be underſtood of thoſe Biſhops who were elected, and not yet confirmed by the Pope. According to the meaning of this Concordate, therefore, every Biſhop, immediately after his election, ought to apply to the Emperor firſt for inveſtiture, and then to the Pope for confirmation. Of courſe it was very natural for conteſted elections to be referred, not to the Pope, but to the Emperor, for deciſion. The Pope was afterwards obliged to confirm the perſon, whom the Emperor had inveſted, in his eccleſiaſtical dignity. Thus the Emperor ſtill preſerved a conſiderable influence in the appointment of the Germanic Biſhops, as he only inveſted ſuch candidates

(*a*) The contents of this CONCORDATE are chiefly as follows: "Ego, Calliſtus, concedo *electiones epiſcoporum et abbatum* Teutonici regni, *in præſentia tua* fieri; ut ſi qua *diſcordia* emerſerit, metropolitani et provincialium conſilio vel judicio ſaniori parti aſſenſum et auxilium prebeas."

SCHMAUS's Corp. Jur. Pub. p. 2.

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candidates whoſe ſentiments correſponded with his own, and very frequently diſpoſed of Biſhopricks as it ſuited his own inclination.

But in leſs than an hundred years this affair took a very different turn. When the Imperial election itſelf was afterwards conteſted, and two different Princes were competitors for the title, a ſimilar diſpute aroſe concerning the election of a Biſhop, and each claimed the right of inveſting, and conferring the epiſcopal dignity. The Pope, however, interfered, and decided the conteſt himſelf with ſuch ſucceſs, that a cuſtom aroſe which was quite the reverſe of the former one, and has ever ſince continued; for a German Biſhop is now no longer under the neceſſity of applying to the Emperor immediately after his election, but after he has been confirmed by the Pope, who recommends him to the Emperor by letter. If the caſe of a conteſted election ſhould occur at preſent, therefore, as it did but a few years ſince at Liege, where one party elected a Prince of Saxony, and the other the Count of Outremont, the deciſion would not be referred to the Emperor, but to the Pope; and the perſon who is confirmed by the Pope conſiders it now as an eſtabliſhed right, that the Emperor cannot refuſe him his inveſtiture. Thus the Pope in this point likewiſe gained the aſcendency over the Emperor, and the ſpiritual triumphed over the temporal power; not indeed at once, but by a ſeries of plans, the execution of which was never neglected, till they at laſt obtained the victory.

In

In mentioning the election of the Bishops, it may with the greatest propriety be observed, that an alteration was introduced at this period, even in the mode of electing them, which has been ever since continued. According to the original design of the episcopal office, when the care of souls, or at least the inspection over those who were appointed for that purpose, and for the performance of religious worship, was entrusted to the Bishops, it was but just and natural for every congregation, or at least for the body of the Clergy, and the people over whom the Bishop was appointed, to choose a suitable person, and submit their choice to the approbation of the supreme power. It was not the Clergy alone, therefore, but the Burghers of the city which was the see of the Bishop, and the Nobles of the diocess, who took part in the elections. Even with respect to the Clergy, this privilege was not merely confined to a limited number of Canons who immediately belonged to the episcopal cathedrals, but all the Clergy of the towns as well as of the country claimed an equal right of giving their voice.

A remarkable alteration had already gradually taken place with respect to the Canons, in most of the Bishopricks. After the reign of Lewis the Pious, the Bishops, in conformity to a rule established by Chrodogang, Bishop of Metz, ought, like the monks, to have lived together, eat at the same table, slept in the same house, &c. and formerly the Bishops were even frequently chosen from the Benedictine order;

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order (*a*); but by degrees it became cuſtomary in the Biſhopricks, for the Canons, inſtead of living together, and having a common table, to enjoy ſeparate revenues, and reſide in private houſes, where they managed their own concerns, and appropriated the profits of their Prebends as they pleaſed. They even ſuffered the public ſervice of the church, which was properly their office, to be performed by ſubordinate clergy or vicars. The only affairs which were left to the direction of the collegiate meetings, and conſultations held by the Chapters, were ſuch as were generally intereſting. In order to hold theſe conſultations, it was neceſſary that the Canons ſhould occaſionally reſide, to attend them perſonally; and this was in ſome meaſure the origin of the preſent conſtitution of the eccleſiaſtical Chapters in Germany.

The profits of the Prebends, as well as the epiſcopal revenues, were ſo conſiderable in moſt of the Biſhopricks, that the moſt diſtinguiſhed families amongſt

(*a*) There were at leaſt ſeven cathedrals in Germany, where the Clergy were originally Monks; viz. Freiſingen, Salzburg, Utrecht, Eichſtadt, Wurtzburg, Bremen, and Ratiſbon.—ABELE's Journal for Canon Law and Eccleſiaſtical Hiſtory, St. 1. Leip. 1778, p. 80. Twelve regular Capitulars were likewiſe added to the cathedral of Ratzeburg, who were ordered by Pope Adrian IV, in 1157, to conform to the rules of St. Auguſtine, and wear the habit of the Præmonſtratenſes; and to theſe he gave the right of a free election.—Fred. Aug. Rudloff's Pragmatic Manual of the Hiſtory of Mechlenburg, Vol. I, p. 161. Schwerin, 1780.

CHAP. VIII.

amongst the High and Inferior Nobility were candidates, not only for Bishopricks and other Prelacies, but likewise for the Canonries or Prebends. Whereever circumstances and opportunity favoured, statutes were made exclusively in favour of the Nobility, prohibiting the admission of any one into the Chapter who could not prove his descent from a certain number of noble ancestors *; a rule which was still more strictly observed in the appointment of Bishops. Thus it became in some measure the common interest of the Chapters, and of the Noble families, to exert themselves to the utmost of their power to exclude the Burghers from all concern, either actively or passively, in the episcopal elections. There could not be a better method adopted to accomplish this than by conforming to the principle which had crept into the system of hierarchy; that it was highly improper for secular votes to have any concern in the appointment to spiritual offices. Whenever it happened therefore, which was frequently the case, that one

 candidate

* In many of the Chapters, no less than sixteen descents are necessary; and any interruption of Nobility, either on the paternal or maternal side, is sufficient to deprive a family of its privilege of admission on these noble foundations. This was probably the case with many religious foundations in England; and we find some remains of it even now in the statutes of All Souls College in Oxford, where the expression *bene nati* requires the candidates to be born of a good family, though not perhaps of such ancient descent as those of Germany, which in England, where so few advantages are derived from the imagined honour, would now be difficult to prove.

candidate was favoured by the Burghers, and that another had secured the interest of the Clergy and Nobility, the latter chose rather to join with the Clergy, or even withdraw themselves entirely from taking any part in the election, that the Burghers might be the sooner and more effectually prevented from having any concern in them.

Thus the right of election in most of the Bishopricks became, at different periods, the exclusive privilege of the Canons, nearly in the same manner as the Cardinals gradually obtained the sole right of electing the Pope, and the Electors of Germany the Emperor. In other respects, likewise, there was a similarity of circumstances. A Bishop, who did not think it a matter of indifference who was to be his successor, endeavoured to conciliate the friendship of the Canons. They were also, as it were, members of one body, as the Bishop and Canons together represented the Church. The latter therefore were called upon to give their advice; and it soon followed, that no business of importance could be transacted without their concurrence.

When all this had begun to lay the foundation of a custom, which was by degrees tacitly established, the idea was soon suggested of proposing a capitulation at the election of every new Bishop, in which they obliged him to swear, that he would pay due observation to the prescriptions it contained.

tained (*a*). Thus the Biſhops and Chapters at laſt ſtood in an entire new relation to each other, and the latter obtained the right of exerciſing all the epiſcopal prerogatives during the vacancy of a See, whether it was occaſioned by death, the reſignation of an incumbent, or otherwiſe.

Thus the Biſhops and Canons almoſt entirely loſt their original deſtination. Circumſtances were ſo altered now, that they no longer conſidered it as their office to perform the public worſhip of God and the ſervice of the church. Biſhopricks and Prebends were looked upon merely as foundations for the ſupport of the High and Inferior Nobility, and of thoſe ſons whom the family eſtates were not ſufficient to provide for.

(*a*) There are records to be met with as early as the eleventh century, in which the newly-elected Biſhops promiſed their Chapters certain privileges; as Biſhop Bechtold of Paſſau, 1252.

HANSITZ, *Germ. Sacra*, Tom. I, p. 391.

One of the firſt capitulations formerly ſworn to, was that of Albert, Archbiſhop of Magdeburg, 1383.

LUDEWIG, *Reliq. MStor.* Tom. XII, p. 471.

Other examples occur afterwards in Wurtzburg, 1411, and Bamberg, 1422; the former in Lunig's Imperial Archives, Spicil. Eccl. Tom. II, p. 969; and the latter in the Examination of the Writings of the Chapter of Bamberg, Vol. II, § 23.—POSSE on the Legality of Capitulations at the Election of the Catholic Eccleſiaſtical Princes of Germany. Gottingen, 1784. p. 36, 38.

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This was the caſe likewiſe with the convents, the wealth of which afforded ſuch opportunities for procuring the conveniences of life, that their members ſoon almoſt wholly deviated from the original deſign of the founders, and the rules of their orders. To remedy this evil, a plan was adopted of reforming the Benedictine order, which was particularly attempted in the eleventh century at Clugny in Burgundy, and at Hirſchau in the Dutchy of Wurtemberg (*a*). Even new orders aroſe, ſuch as the Carthuſians in 1086 (*b*), the Ciſtercians in 1098 (*c*), and the Præmonſtratenſes

(*a*) This was begun by Otho, Abbot of Clugny, whoſe monaſtic diſcipline was adopted before the expiration of the eleventh century throughout Europe. Between the years 1069 and 1091, William, Abbot of Hirſchau, introduced a new diſcipline. He was a native of Bavaria, and originally one of the Religious of the Monaſtery of St. Emeran. According to his rules, twelve Monks were obliged to employ themſelves conſtantly in tranſcribing the books of the Holy Scriptures, and various treatiſes of the ancient Fathers of the Church, which he diſtributed amongſt the convents. The congregations of Clugny and Hirſchau were afterwards in great reputation.—Lori's Hiſtory of Bavaria, p. 656.

(*b*) The Carthuſians were firſt eſtabliſhed at Chartreuſe, near Grenoble, in Dauphiné, under the direction of a German of the name of Bruno, a native of Cologne, and Prebendary of Rheims. They came into Bavaria in the year 1174.—Lori, p. 659.

(*c*) The Ciſtercian order ſoon extended itſelf in Germany, and the members of it were employed in the public ſervice of the church. In 1122 Frederick, Archbiſhop of Cologne, invited them to his country, and founded the Convent of Altkampen or Camp for them, the Abbot of which ſtill ſtyles himſelf the Primate of the Ciſtercian Order

monſtratenſes in 1121 (*a*); but great as the reputation of theſe new foundations was on account of the rigour of their diſcipline, the increaſing liberality of benevolent perſons occaſioned the ſame defects in them, which were formerly complained of in the others. The ancient monaſtic diſcipline began to be totally neglected, by ſingle convents at firſt, and afterwards whole orders being withdrawn, by means of letters of indulgence granted

Order in Germany. Amongſt the moſt ancient and original Convents of this order in Germany, are Ebrach, founded in 1126, or 1127; Walkenried, in 1129; Volkerode, 1131; Heilſbrunn, 1133; Michelfeld, 1133; Kaiſerſheim, the Monks of which came from Lucelle, in 1134; Maulborn, in 1139; and ſeveral others. Many of the Ciſtercian Monks were made Biſhops, as Otho of Auſtria, who was Biſhop of Freiſingen, 1139; and before him, in 1133, Benno was made Biſhop of Mecklenburg, where he introduced the brethren of his order inſtead of the Canons, and was the occaſion of the Monks of the Ciſtercian order being admitted as regular Canons in other churches.

MANRIQUEZ, *Annales Ciſtercienſes*, ad. a. 1122, 1133, cap. 3. —Abele's Journal for Canon Law, &c. St. 1. p. 84.—Lori, p. 658.

(*a*) Norbert, a nobleman of the Lower Rhine, afterwards Archbiſhop of Magdeburg, was the firſt who thought of increaſing the rigour of St. Auguſtine's rules, and eſtabliſhed a new order in the deſert of Præmonſtrat, in the Biſhoprick of Laon, in the year 1120, which from this circumſtance was called the Præmonſtratenſes, and ſometimes the White Canons. The monaſtic diſcipline of this order was ſo rigid, that it was ſoon eſtabliſhed throughout Europe, and between the years 1127 and 1147 in no leſs than ſix different places of Bavaria.—Lori, p. 655.

by the Pope, from the inspection of the Bishops, which they had formerly been under, and becoming immediately subject to the See of Rome. At last, by the admission of lay-brethren (*a*), the Monks abandoned their manual labour, and those arts which they had hitherto found so profitable. Instead of cultivating them now, they devoted themselves to indolence, and all its train of evils; a circumstance which has rendered them, since that period, an oppressive

(*a*) According to the original regulations of the Convents, the Monks employed themselves in all kinds of manual labour: they were carpenters, bricklayers, bakers, and had the management of all the domestic concerns. Convenience perhaps, or a desire of prosecuting their studies without interruption, occasioned the change which took place in some of the cloisters at the beginning of the eleventh century, when laymen were admitted on the foundations, to whose industry the Monks, who thought themselves superior, now left their former mean occupations; and for this labour they honoured them with the appellation of Brethren, and the richest blessings of their monastic prayers and masses. A well-meaning Abbot, at Hirschau in Saxony, first introduced this custom; and in a short time the Monasteries universally adopted it, because it favoured the pride, and suited the convenience of the Monks, and allowed them to enlarge the scale of their establishments, which according to their old institutions was not in their power.—Spittler's Eccl. Hist. p. 298.

William, Abbot of Hirschau, maintained an hundred and fifty Monks, who were devoted to the choir; sixty lay-brothers, *fratres conversos*, as they were called, who wore the habit of the order, but who were obliged to labour; and fifty other brothers, *oblatos*, who wore secular habits, and were obliged to supply the Convent with all the necessaries of life, that the other lay-brothers might not have any pretence for wandering out of the limits of the cloister.—Lori, p. 657.

oppreſſive burthen, not only to Germany, but to all the Catholic part of Europe (*a*).

Another ſort of ſpiritual foundations appeared at laſt in the religious orders of Knighthood. Theſe were firſt occaſioned by the cruſades; and the principal object of them was the care of ſick pilgrims in the hoſpitals at Jeruſalem. Another object ſoon afterwards connected with this, was the protection of them from the aſſaults of the infidels; and hence originated the deſign of univerſally employing themſelves againſt the enemies of the Chriſtian Church in general. Thus in the year 1099 aroſe the order of the Knights of St. John, in 1118 the Knights Templars, and in 1190 the Teutonic order, or Knights of St. Mary. The two firſt of theſe orders were not confined to any particular nation, but the latter to the Nobility of Germany alone; and all have been extended beyond their original deſign, to an incredible degree.

CHAPTER

(*a*) The number of Convents which were ſucceſſively founded in Bavaria alone, from the year 1074 until 1156, may be found in Lori's hiſtory, p. 656. The Nunneries likewiſe of every order were ſo increaſed in number, that there was ſcarcely a ſingle Monaſtery which had not a Nunnery adjoining.—Lori, p. 659.

OOK
II.

CHAPTER IX.

Great Revolutions in the Political Conſtitution of Germany during the Reign of Henry V.

Hereditary right eſtabliſhed in the Secular States, particularly in the counties—In the Low Countries ſooner than in the other parts of Germany—The cantons converted into counties, with hereditary family names derived from caſtles, which were the ancient ſeats of the reſpective Houſes, and occaſionally changed by the building of new caſtles, or diviſion of the territory—Introduction of family arms—Difficulty attending genealogical reſearches beyond the twelfth century—Deſcent of moſt of the Princely Houſes of Germany from Counts—The Dutchies hereditary—Deſcent of the Houſes of Lorraine and Brunſwick Luneburg from thoſe times; alſo of the Houſes of Heſſe and Baden—Mode of inheritance of ſeveral ſons in the Princely Houſes, but hitherto no right of primogeniture—Various changes occaſioned by the extinction of ſeveral families—State of the Venedic countries.

ANOTHER conſequence of the diſſenſions which had hitherto prevailed, concerned the inheritance of the counties and dutchies, which in their original quality were conſidered as governments dependent upon the Crown, and transferable from one perſon to another; but they began to be looked upon now as the hereditary property of every family which had once enjoyed the poſſeſſion of them.

With

With refpect to the counties in thofe countries which formerly made a part of the Dutchies of Upper and Lower Lorraine, fuch as Flanders, Namur, Hainault, Holland, and Friefland, they had long been confidered as hereditary family eftates; and the families which poffeffed them were afterwards called by their names; but in the other countries of Germany, between the Rhine and the Elbe, the word GRAFSCHAFT, or county, in Latin *comitia, comitatus*, was not ufed in the fenfe it is now, as a geographical defcription of a certain diftrict of land before the twelfth century, but only to diftinguifh the honourable office and command of a Count from that of the Dukes, Margraves, Counts-Palatine, &c. The countries at that time were only divided into GAUE, or cantons. Eftates therefore were not defcribed as lying in any particular county, but diftinguifhed by the canton, and only the name of the Count mentioned who had the command of that diftrict; for inftance, fo many hides of land, or fuch a village, fituated in fuch a canton, in the government of this or the other Count: but then it by no means followed, when this Count died, that his fon fhould be his fucceffor; it always remained in the power of the King to appoint any other Count to the fame canton or not; and hence we may with certainty conclude, that cantons were not hereditary family eftates.

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At the beginning of the twelfth century it was evident that the hereditary rights of the families of the Counts, which were before admitted only in Lorraine, and the countries now called the Netherlands, could no longer be diſputed throughout Germany. They were not extended ſo far that whole cantons were immediately converted into family eſtates; but every Count reſided, like the Dynaſts, in a caſtle, which was built either by himſelf or by his anceſtors, and the domains of which did not merely conſiſt of original fiefs, granted in former times to the governors by the Crown, and the profits of which were in lieu of a ſtated ſalary; but they conſiſted in a great meaſure of private family eſtates, which it would have been difficult now to have ſeparated. Thus, perhaps, when the government of a canton had once or twice been tranſmitted from father to ſon, it was difficult a third time to eſtabliſh a contrary ſyſtem; and at laſt it became a cuſtom, if a Count had a ſon, to give him the government of the canton which had been entruſted to his father; and thus originated the hereditary rights now enjoyed by the Counts.

A natural conſequence of this was, that the cantons were no longer called after their original names, nor the Counts known by the names of Henry, William, Conrad, &c. but they were called now, like the Dynaſts, after the caſtles where they reſided; as the Counts of Witgenſtein, Stollberg, Techlenburg,

burg, &c. From their caſtles likewiſe, the adjacent territories acquired their names as dynaſties or counties, which for this reaſon uſually end with the ſyllables BURG, BERG, STEIN, FELS, HEIM, or AU; as ISENBURG, STOLLBERG, WITGENSTEIN, BRAUNFELS, WERTHEIM, HANAU, NASSAU, &c. The name of GAU, or canton, was almoſt totally loſt about the year 1100 (*a*), except where it is ſtill uſed to diſtinguiſh a few diviſions of the territories of the Knights, or free Nobility of the empire, where the name occaſionally occurs, as CREICHGAU; or to diſtinguiſh particular diſtricts, as the RHEINGAU, NORDGAU, &c. but there is not a ſingle county or ſeignory, the name of which ends with GAU at preſent. Neither was it an eaſy matter for a canton to preſerve its original limits, becauſe there were eſtates in moſt of them which belonged to religious foundations, and which had been before exempted from the juriſdiction of the Counts. In ſhort, inſtead of the ancient diviſion of Germany into cantons, there appeared in the twelfth century an infinite number of hereditary counties and lordſhips; and the family names of the poſſeſſors of them,

(*a*) The Society of Sciences at Manheim propoſed this ſubject for a prize, which was gained by Hector William de GUNDERODE, Counſellor of Regency at Baden. The ſubject of his Eſſay is the principal reaſons which occaſioned the diſuſe of the diviſion of Germany into cantons, particularly in the provinces on the Rhine. See his Contributions to a Hiſtory of Juridical Literature, Gieſſen, 1778, p. 1, 26. See likewiſe Dan. Hen. MUSÆUS *de cauſis præcipuis, cur diviſio Germaniæ in pagos ſenſim deſierit?* Kiel. 1778.

BOOK II. them, which were derived from the ancient reſidences, ſoon became equally hereditary.

At firſt it was not unuſual for families to change their names when they built new caſtles; as the Counts of Wittelſbach did, who were before called Counts of Scheiern; the Counts of Naſſau, before Counts of Laurenburg; and the Lords of Anhalt, before called Lords of Ballenſtädt, &c. Or when two brothers ſettled in different caſtles, and divided their paternal territories, they kept neither their lands nor name in common; but each of them, as well as their poſterity, took the name of their reſpective caſtles; as, of two brothers, one called himſelf Count of Sain, and the other Count of Sponheim, without preſerving any family name in common, as the Houſes of Iſenburg, Solms, Hohenlohe, Oettingen, and others do; though they are divided into ſeveral branches, as Iſenburg-Birſtein, and Büdingen; Solms-Braunfels, Solms-Laubach, Solms-Hohenſolms; Hohenlohe-Waldenburg, and Neuen-Stein; Oettingen-Spielberg, Wallerſtein, &c. This remark is of ſome conſequence, as it throws a conſiderable light upon the original mode of ſucceſſion to eſtates in the families of the High Nobility of Germany; for according to this, the ſons muſt have had a prior right to the daughters. But when a father left ſeveral ſons, theſe only inherited from each other if they continued to poſſeſs the patrimonial eſtates in common; or, in caſe of a ſeparation, reſerved

reſerved the common reverſion of the property, and mutual ſucceſſion in future. In oppoſite caſes, where two or more brothers ſeparated from each other entirely, or concluded a treaty of partition, called a TODTHEILUNG, with each other, which frequently happened with unconnected eſtates, the territory was divided amongſt them; and in that caſe, the diſtant relations of a Houſe, whoſe male line was extinct, could claim no right of ſucceſſion prior to the daughters, or rather had no pretence to a right of ſucceſſion at all. Thus, for inſtance, upon the deceaſe of the Counts of Sain, that county did not devolve to the Counts of Sponheim, though they were really related by blood, but by means of the daughters, into quite different families. This is very different from the caſe of Baden-Baden which has happened in our own days, where, upon the extinction of the male line of that Houſe, the Houſe of Baden-Dourlach ſucceeded; or as it will be in the Houſe of Anhalt-Zerbſt, where, on the extinction of the male line, the three other branches of the Houſe of Anhalt will be intitled to ſucceſſion. This made the queſtion of ſuch great importance on the extinction of the Houſe of Bavaria in the year 1777, Whether any treaty of partition had been concluded between the anceſtors of the Palatinate and Bavarian Houſes? the reverſe of which was evidently proved by family compacts, as well as by the circumſtance of the family name and arms having been preſerved in common.

Even

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Even armorial bearings became after this period a matter of importance, becaufe they became equally hereditary nearly about the fame time that the families took their names from their caftles or territories; but where feveral chiefs of a Houfe, in confequence of treaties of partition, ceafed to hold their eftates in common, and the right of a mutual fucceffion no longer exifted, there likewife the families ceafed to bear the arms, which before had been common to all of them. Where this was not the cafe, the prefervation of the fame name, and the fame armorial bearings, were a certain proof of the fame defcent, and of a mutual right of inheritance. In the fucceeding ages, almoft all the families of the High and Inferior Nobility thought their whole welfare depended upon their tranfmitting their name and arms, with their family eftates, to their lateft pofterity. Even in the prefent day almoft all the families of the Princes and Counts of Germany poffefs the fame lands, the fame names, and bear the fame arms which their anceftors did in the twelfth century. Many of them indeed have acquired an increafe of territory, and fuperior titles; but few have experienced the lofs of them, except from very extraordinary caufes, fuch as profcription, war, and treaties of peace, where neceffity has had no law; as in the inftance which will foon occur of the Guelphic family, which was by fuch means deprived of the poffeffion of Saxony and Bavaria.

All

All this muſt conſiderably tend to illuſtrate hiſtorical and genealogical inquiries, becauſe hereditary family names ſerve as the ſureſt guide for every Houſe as far as the twelfth century. Earlier than this, inquiries are attended with greater difficulty, becauſe ſeveral perſons occur in records of the ſame date with the ſame names, which prevents us from being able to diſtinguiſh one from the other with any degree of certainty. For inſtance; which of the different perſons who bore the name of William or Conrad, was the anceſtor of this or that particular Houſe? The names of cloiſters, caſtles, noble eſtates, and villages, are the only veſtiges by which we can trace the families from which the preſent poſſeſſors ſprung. Thus the Houſe of Habſburg-Auſtria can prove its antiquity with a great degree of probability even ſeveral centuries before the twelfth, as well as the anceſtors of the preſent Palatine, Saxon, and Brandenburg Houſes, who can trace their deſcent from the ancient Counts of Wittelſbach, Wettin, and Zollern, and even from the more ancient heads of thoſe Houſes, before they had any hereditary family names. It is very ſingular, likewiſe, that the anceſtors of the greateſt Houſes of Germany, the four moſt ancient ſecular Electors ſhould appear in the twelfth century only as Counts, and that their poſterity ſucceeded at a later period into thoſe Electors places whoſe families became extinct.

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The Dutchies, and other ſecular Principalities of Germany, were not ſo eaſily rendered hereditary as the counties; but even this was accompliſhed at laſt during the unfortunate ſeries of troubles in which Henry IV was continually involved. The very ſame families which were in poſſeſſion of the Dutchies and Principalities during the laſt years of his reign, and the two reigns which ſucceeded, have continued ever ſince to enjoy them, except where ſuch families have become extinct, or have loſt their territories by ſuch events as proſcription, or war. The Dutchy of Upper Lorraine continued in the poſſeſſion of the poſterity of the ſame Duke Gerrard who enjoyed it at the time of Henry III, till Francis Stephen, the father of the preſent Emperor Joſeph II, was obliged, by the peace of Vienna, concluded in the year 1735, to exchange it for Tuſcany. Thus likewiſe the anceſtors of the Houſe of Brunſwick-Luneburg, or the Guelphic family, would have kept poſſeſſion of the Dutchy of Bavaria ſince the year 1070, and of the Dutchy of Saxony ſince the year 1137, if they had not been deprived of them by Henry the Proud, having been put to the ban of the Empire in 1138, and Henry the Lion in 1180.

There are certainly none even of the moſt flouriſhing Houſes at preſent which can be compared with either of theſe, in reſpect to the antiquity of their ducal extraction, except the Houſe of Heſſe, which deſcended

descended from the ancient Dukes of Brabant, and the Houſe of Baden, whoſe anceſtors were Dukes of Zähringen; but Zähringen was only a caſtle, which was the ſeat of a Count's or Dynaſt's family in the Briſgau, and acquired the quality of a Dutchy becauſe the poſſeſſors of this caſtle had been Dukes of Carinthia from the year 1060 until 1073, and afterwards obtained the promiſe that they ſhould be Dukes of Swabia: but this promiſe was not fulfilled; ſo that they continued to enjoy the ducal title only annexed to the ſeat of their family. This is nearly the ſame caſe with the Dukes of Weimar, Gotha, Hilburghauſen, the Landgrave of Heſſe-Darmſtadt, and others at preſent, who, though the places whence they take their titles are neither principalities nor territories, but merely reſidentiary towns, enjoy the title of Duke or Landgrave on account of the dignity of the Houſes to which they belong.

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The anceſtors of the preſent Houſe of Heſſe, in the year 1106, were Dukes of Lower Lorraine, or, as they afterwards called themſelves on account of the greateſt part of their patrimonial eſtates lying in the cantons of Brabant, Dukes of Brabant; a title they would ſtill enjoy if the male line of the branch, which was in poſſeſſion of that country, had not become extinct in the fourteenth century. The country of Heſſe had devolved before this, in the eleventh century, by the marriage of a Princeſs of Thuringia to a Duke of Brabant, into another branch

 of

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of this House, which survived the male line of Brabant, but did not succeed, because the separation of the two brothers, one of whom had possession of Brabant, and the other of Hesse, was considered as a perpetual partition. Thus it frequently happened that two different branches were formed from two brothers, who acquired a separate territory, either from his paternal or maternal side, or else by some other legal means, and two distinct families arose, who considered themselves as independent of each other; of which we have, even lately, had almost a similar instance in the Houses of Austria and Tuscany.

In those early times it was still more usual, when a Duke, Margrave, Count Palatine, or other Count, had several sons, and one of them, who was generally the eldest, inherited his father's territory and title, for the younger sons to be differently distinguished by the titles of Duke, Margrave, Count or Dynast; in the same manner as in France, when there are several brothers, the eldest is often DUC, another MARQUIS, a third COMTE, and the fourth CHEVALIER *. Soon afterwards, when the secular territories became hereditary, it was

* The following passage occurs in a record of the Counts of Bentheim even of the year 1333. "Nos Ecbertus *nobilis* de "Benthem, a delecto quondam Johanne, *comite* in Benthem, "fratre nostro."

JUNG. *Histor. Benthem.* Diplom. p. 149.

CHAP. IX.

was customary, if a Prince or Count had several sons, for each of them not only to have his share of the patrimony, but to inherit his father's title; as we find the titles at present of the Dukes, Counts Palatine, Margraves, Landgraves, and Counts, continued to all the family. The original quality of the titles annexed to the Dutchies, or other Principalities and Counties, which implied merely an office of command, was soon forgotten. The possessors no longer considered the district they commanded like a French GOUVERNEMENT, which in its very nature is indivisible; but at last they were divided amongst several sons, or held in common, like paternal inheritances, except indeed that a son or two was sometimes provided for by ecclesiastical preferment, and in that case renounced the actual possession and enjoyment of the paternal estates in favour of those brothers, who remained laymen, and usually married.

The right of PRIMOGENITURE came so little into consideration, that on the contrary it was very usual even for the eldest son and his next brothers to enter into the ecclesiastical estate, and procure as many prebends and benefices as possible, that the younger brothers, who were left to keep up the family, might reap greater benefit from their paternal estates; a practice which is still common in the Houses of the Catholic Counts, and other Nobility.

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The alterations which have ſince taken place in the ſtate of Germany, and particularly in the ſecular States of the Empire, may be attributed to the circumſtance of an incredible number of the Houſes of the Princes, and ſtill more of the Counts and Dynaſts, becoming totally extinct during the long period of time from the twelfth century down to the preſent day. The number of families of Counts and Dynaſts which flouriſhed formerly, but now exiſt no more, certainly amount to ſeveral thouſands. It was the fate of moſt of theſe, that their territories have devolved to the Houſes of the Princes either by a conſolidation of fiefs, reverſion, marriage, fraternal compacts of inheritance, or ſome other means, and have continued in their poſſeſſion either as diſtinct counties or lordſhips, or elſe incorporated as bailiwicks with more extenſive countries. This circumſtance has not only gradually occaſioned a material decreaſe of the number of perſonal ſecular ſtates, but even entirely changed the original equilibrium which ſubſiſted between the Emperor and the States, as well as amongſt the latter themſelves. As long as it was cuſtomary for Principalities to be divided amongſt ſeveral brothers or relations of the Houſe, and the counties were ſo many in number, the diſtinction was by no means ſo great between a Prince, a Count, and a Baron, as it is at preſent. When the Dutchies of Bavaria, Pomerania, Mecklenburg, and others, were often divided amongſt four, ſix, and even more different branches

branches of a family, and Hanau, Hohenlohe, Solms, &c. had each of them a separate Lord, the difference between those countries could not be great. Or when we consider the weight of the counties with respect to Germany in general, the number of Counts were certainly able to preserve a counterpoise against the number of Princes, which was much inferior. But as Germany was divided into so many different parts, amongst such a number of Princes and Counts, it was easy for the Imperial power to maintain a certain preponderance, which evidently decreased in proportion as several territories came into the hands of a few Houses, and those Houses contrived to extend their dominions still further, by means of the right of primogeniture, and a variety of other methods.

I have already observed above, that the origin of the territorial power was very different in the countries belonging to the Venedi than in the territories of the other Princes of Germany (*a*). Notwithstanding this, it was very usual here likewise in the twelfth century, for single provinces to derive their names from towns or castles under whose

(*a*) See p. 7, Rudloff's General Observations on the Difference of the Germanic Territories, whose ancient inhabitants were of Sclavonic origin, and those who were originally Germans, in his literary contributions to the Schwerin Journal, 1771, St. 4.—Fred. Aug. Rudloff's Manual of the History of Mecklenburg, Vol. I, p. 240.

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protection they ſtood; as the countries of Mecklenburg, Ilow, and Werle (*b*). The Princes, likewiſe, amongſt the Obotriti were already called the Lords of Mecklenburg, and the Princes of Pomerania acquired the name of Demmin (*c*).

(*b*) Rudloff's Hiſtory of Mecklenburg, Vol. I, p. 151.

(*c*) Ibid. p. 156.

CHAPTER

CHAPTER X.

Further Political Revolutions during the Reign of Lotharius II. and his Succeſſors, until Frederick II, 1125—1235; particularly the Eſtabliſhment of Elections and Electors. Civil and Canon Law; and Proſcription of Henry the Lion.

Germany converted into an elective Empire—Excluſive right of electing by degrees confined to three Spiritual, and four Secular Electors—The Pope aſſumes a ſupremacy over the Emperor—The authority eſtabliſhed of the Roman code of Juſtinian, and the Papal canon law—Reſort to foreign univerſities, and the uſe encouraged thereby of the foreign codes of law—Precaution of the Houſes of the States of the Germanic Empire to preſerve their former right of ſucceſſion entire, by means of the renunciation of daughters, and family compacts—Predominance of private wars, allowed of even in the PUBLIC PEACE enacted by the Emperor—Viſible increaſe of the territorial power of the States—Practice of proſcription, and conſtitution of the Germanic courts of judicature ſtill preſerved—Particular circumſtances attending the proſcription of Henry, ſurnamed the Proud, and Henry the Lion—Illegality of the latter, but attended with unfortunate conſequences for the Guelphic family—Loſs of the Dutchy of Saxony, as well as of the Venedic countries Pomerania and Mecklenburg—Fate of the Dutchy of Bavaria—Conferred on the Houſe of Wittelſbach—Hereditary territories ſtill left to the Guelphic Houſe—Whence aroſe the Dutchy of Brunſwick-Luneburg.

ANOTHER important conſequence of the political diſſenſions which diſturbed the reign of Henry IV, was the converſion of Germany into an

BOOK II. elective empire. Every appearance even of the hereditary right, which had been hitherto always enjoyed by some royal family, totally vanished. The circumstances of the times were particularly favourable to this event; for the reigning family became again extinct by the death of Henry V; so that at all events an election must have followed. The choice however, after mature deliberation, did not fall upon the issue of the female line of the former family, though the two sons of Henry's sister, first Frederick of Swabia, and afterwards Conrad of Franconia, both flattered themselves with the expectation of it. It fell, on the contrary, upon
A. C. 1125. Lotharius of Saxony, who left only a daughter. Her husband Henry, surnamed the Proud, Duke of Bavaria and Saxony, was again passed over in favour
A. C. 1137. of Conrad III; and at his death his son was not
A. C. 1152. elected, but his cousin Frederick I, who was raised to the throne by a perfectly free election. These three elections, which were perfectly free, and regularly followed each other, so thoroughly established this part of the Germanic constitution, that the truth of the position, that Germany, or in the language of those days, the Roman Empire, is not an hereditary, but an elective government, has never since been questioned. Frederick I, it is true, procured his son, Henry VI, a Prince who was then only four years old, to be elected King of the Romans, in the year 1169: and this Prince made an attempt in 1196 to render the throne hereditary; but his attempt was unsuccessful, and he was obliged to

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reſt ſatisfied with ſecuring the election of the King of the Romans in favour of his ſon Frederick II. This election met with violent oppoſition from the See of Rome, for the Pontiffs had acquired greater influence in the election of the Emperors ſince the conteſted election of Philip and Otho IV, and ſoon began, if the Emperors did not meet with their approbation, even to ſet up others againſt them; as Otho IV, who oppoſed Frederick II; Henry of Thuringia, who was Frederick's antagoniſt; William of Holland, &c.

The right of election was excluſively veſted in a few of the Princes almoſt as ſoon as the Empire became elective. The election of Lotharius indeed was conducted in the ſame manner as was uſual in ſimilar caſes, when a new election took place on the extinction of a reigning family. All the eccleſiaſtical and ſecular States aſſembled with their retinues, which from their number had more the appearance of the encampment of an army than a meeting for the purpoſe of electing an Emperor: but the buſineſs itſelf was ſettled by a kind of compromiſe, or at leaſt in the form of a deliberation of a few Princes, who only expected afterwards the concurrence of the reſt. The alteration which had lately been made in the manner of conducting the election of the Pope, as well as of the Biſhops, ſeemed to afford a good example; and there was reaſon to expect more order likewiſe at the election of the Emperors, if the neceſſary deliberations

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berations were left to a lefs number of perfons. It is exprefsly mentioned, that Frederick I. was elected by fix or eight Princes who held the high Imperial offices; and during this reign, likewife, Bohemia appears in poffeffion of the office of Arch-cupbearer, the Palatinate of High-fteward, Saxony Grand Marfhal, and Brandenburg Grand Chamberlain; which high offices, with the refpective prerogatives annexed to them, have continued in the fame Houfes to the prefent day. The word Elector is exprefsly mentioned (*Electores*) in a grant of Frederick I. to the Houfe of Auftria, in which that Houfe was allowed to take place immediately after the Electors. Since that time likewife, the city of Frankfort on the Maine has been univerfally acknowledged to be the proper place of election, as it was already cuftomary for the newly-elected Emperors to receive the Germanic crown at Aix-la-Chapelle, and after that ceremony to undertake the expedition to Rome to receive the crown of Lombardy at Milan, as well as the Imperial crown at Rome, which firft entitled the Monarchs of Germany to affume the title of Emperor.

The connexion of Germany with Lombardy and Rome was now no longer a matter of difpute; but the confequences of it were of a very fingular nature. It was confidently faid at Rome, that Germany was indebted to the Pontiff alone for the title of Roman Emperor. It was almoft confidered as a Papal fief, and the coronation an inveftiture,

becaufe

becaufe an oath was impofed upon the Emperors which very much refembled the oath of allegiance fworn by vaffals.

On the other fide, the idea that the fovereignty over the whole world was annexed to the Imperial dignity, became ftill more prevalent, as well as the notion that the Roman code of laws was univerfally obligatory, at leaft for every nation profeffing Chriftianity; but thofe laws, the obligatory power of which depended upon the Pope, claimed the preference, in conformity to the idea, that the fame relation fubfifted between him and the Emperor as between the foul and the body. A monk of the name of Gratian made a new collection of thefe laws, which ftill form an effential part of the Papal code in ufe at prefent; and fince that period the canon and civil law of the Popes and Emperors, or in other words, the fpiritual and fecular codes, have mutually aided each other, efpecially as a great deal of the former was mixed with the latter; fo that one could not be thoroughly underftood without the other, though whenever a contradiction appeared, the authority of the canon law was always efteemed fuperior to the civil.

To acquire a knowledge of the laws of both thefe codes, and their proper application, not only a greater acquaintance with the Latin language, in which they were written, but much more information and greater abilities were requifite, than was neceffary

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neceſſary in the courts of judicature of Germany, where it had been cuſtomary hitherto to judge only according to provincial cuſtoms and natural equity. On this account the higher ſchools, or univerſities as they were called, of England, France, and Italy, which daily increaſed in reputation, made the knowledge of the law upon the principles of theſe two codes one of the chief objects of education. From theſe univerſities it was viſibly more and more diffuſed, till at laſt it imperceptibly became the general cuſtom to conſider theſe codes as the only ſources of law exiſting in the world, or at leaſt throughout the Roman Empire, of which Germany was conſidered as a part, and all the other European territories as ſubordinate dependencies.

It is probable that the effects produced by the frequent reſort of the Germans to Bologna to proſecute their ſtudies, were ſooner viſible in the countries bordering on the Alps, than in thoſe parts which were at a greater diſtance; but it is incredible how early, how generally, and how powerfully, theſe foreign codes of law operated in Germany, and how ſoon the ancient provincial cuſtoms were ſupplanted or buried in obſcurity. Amongſt other things, the principles of the right of inheritance, eſtabliſhed from time immemorial, by virtue of which hereditary family eſtates could not be alienated to the prejudice of the deſcendants of the firſt poſſeſſor, and the males were preferred to daughters, were in danger of being totally annihilated by the intro-

duction

duction of the oppoſite ordinances of the Roman law, by which every owner was allowed the free diſpoſal of his eſtate, and daughters were put upon an equality with ſons; by which a great part of the Germanic conſtitution, which depends upon the advancement of the principal Houſes, would ſoon have been totally perverted: but this is the reaſon of our meeting with ſuch early and unexpected traces of the Houſes of the Princes and Counts obliging the daughters to renounce their right of inheritance, and endeavouring to eſtabliſh by family compacts what was underſtood of itſelf before, and invalidated only by the introduction of the principles of Roman law. In many caſes it was impoſſible to prevent theſe principles from miſapplication. Even the renunciations and family compacts above mentioned would not have continued valid, if the canon law had not contributed to their ſecurity by the confirmation of them being rendered ſacred by oath; the conſequence of which was, that after that period all compacts reſpecting inheritance and renunciation of right, were confirmed by a perſonal oath, though in fact no ſuch oath was legally requiſite.

The prevailing idea of the obligatory power of the civil and canon law, had no inconſiderable influence upon the conſtitution of the courts of judicature in general, though they were already reduced to ſuch a ſtate of diſorder, through the predominating practice of private wars and ſelf-defence which during ſeveral centuries had been taking deeper root, that diſputes were much

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much more frequently decided now by private combat, or at leaſt by the intervention of AUSTREGUES, or arbitrators, than by the legal deciſions of a court of juſtice, pronounced by authority of the Emperor. Even the PUBLIC PEACE *, an edict which the Emperor Frederick I. promulgated as a fundamental law in the latter part of his reign, was ſo expreſſed, that although incendiaries, and other diſturbers of the national tranquillity, were threatened with the ban of the Empire, yet a particular clauſe was inſerted, by which every one reſerved the right of doing juſtice to himſelf by force, provided he gave three days notice to his adverſary, and declared himſelf his enemy.

A.C. 1187.

A remarkable clauſe was contained in this PUBLIC PEACE likewiſe, that Dukes, as well as Margraves, Counts Palatine, Landgraves, and other Counts, when any one was accuſed before them of a breach of the public peace, ſhould not only put him to the ban in the Emperor's name, but by virtue of their own power as Dukes, Princes, or Counts: and hence, in a great meaſure, may be derived the diviſion of the ſecular States of thoſe times as we find it for the moſt part even at preſent, and the great increaſe of their territorial power. It muſt always be underſtood however, that when any were put to the ban of the Empire, ſuch ſentences of condemnation could only be paſſed in a public court of judicature, by

* LANDFRIEDE, a law enacted for the preſervation of the public tranquillity of the Empire.

by which the mode of adminiſtering juſtice, practiſed by the ancient Germans, was long preſerved, and the cuſtom of trying every one by his equals; for, though ſentence was paſſed in the preſence of the Sovereign, or by a judge of his appointing, yet it was always done with the conſent, and according to the verdict, of a certain number of aſſeſſors or juſtices *.

The moſt important inſtances of this kind were the ſentences of proſcription, paſſed in the two firſt Swabian reigns, in the years 1138 and 1180, againſt the heads of the ſtill flouriſhing Guelphic family. Without repeating from the hiſtory of thoſe times all the perſonal relations in which the two Henries, both father and ſon, whoſe memory hiſtory has tranſmitted under the names of THE PROUD † and THE LION, ſtood with reſpect to the heads of the Germanic Empire, Conrad III. and Frederick I, it may be neceſſary to mention the following circumſtances. The predominant power of the Guelphic family after Henry the Proud obtained from his

* The word here tranſlated Juſtices is SCHÖPPEN, which ſignifies the principal Officers of a Court of Judicature. In Dutch it is ſtill uſed for the Aldermen of a City.

† Henry received the ſurname of SUPERBUS either from his enemies, or; as ſome apprehend, from his magnificence, which the word *ſuperbus* alſo denotes. This Prince having eſpouſed Gertrude, the daughter and heireſs of the Emperor Lotharius, in 1127, received from his father-in-law the inveſtiture of the Dutchy of Saxony in 1136. Upon the death of Lotharius II. there were two competitors for the Empire; one was Henry Superbus, Duke of

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his father-in-law Lotharius the Dutchy of Saxony in addition to that of Bavaria; and the number of patrimonial eſtates which he poſſeſſed in Bavaria, Swabia, and Saxony, was no doubt the grand political motive which induced the reigning family of

of Saxony, Bavaria, and Tuſcany, and ſon-in-law to the late Emperor, who had put the regalia into his hands, and even deſigned him for his ſucceſſor in the Imperial dignity; the other was Conrad III, who was elected. Conrad ſoon after ſent to demand the regalia, which that Prince haughtily refuſing, whence ſome think he obtained his ſurname, he was invited to a Diet aſſembled at Ratiſbon, in hopes of ſoftening him into compliance; yet the Duke continued inflexible, nor would he yield homage to Conrad. But he confided too much in his good fortune, and did not ſeem ſolicitous to gain the other Princes over to his intereſt. This want of precaution proved fatal to him in the end; and his enemies, who envied his proſperity, ſeized the opportunity of reducing his power. He was cited to the Diet of Wurtſburg, but refuſing to appear, was put under the ban of the Empire, and deſpoiled of his Dutchy and fiefs by a decree of the Princes convened at Goſlar. At that time his dominions extended from Denmark to the heart of Italy; for his father had left him the Dutchy of Bavaria, which then included Auſtria, Stiria, and Carinthia: he was likewiſe Duke of Saxony, and poſſeſſed the country of Luneburg, as well as the countries of Querfurt, Weſtphalia, Angria, Holſtein, and Stormar; the Burgraviate of Magdeburg, Nordheim, and other territories: and in Italy he had Eſte and Lombardy, together with Tuſcany. But the ban of the Empire being proclaimed againſt this Prince at Goſlar, the fatal ſentence is ſaid to have produced ſuch an unexpected effect, that he was deſerted by all his friends, and only four ſervants remained with their unfortunate maſter. He died at Quedlinburg in Saxony, a town appointed for holding a congreſs on the ceſſation of hoſtilities in the year 1139, in the fortieth year of his age, not without ſuſpicion of poiſon.

Nugent's Hiſt. of Vandalia, London, Vol. I, p. 328.
Remius's Mem. of the Houſe of Brunſwick, p. 41.

of STAUFEN to ſeek the firſt favourable opportunity of breaking the power, if poſſible, of the Guelphic Houſe by the ſentence of proſcription. It was difficult to find any other pretext for the firſt proſcription, than that the two Dutchies of Bavaria and Saxony could not be united in a ſingle perſon, notwithſtanding the very contrary of this was warranted by many examples which had never been diſputed (*a*). The manner likewiſe in which the ſentence of proſcription was pronounced againſt Henry the Proud, appeared to him to be ſo exceptionable, that he was encouraged to oppoſe the execution of it, by having recourſe to arms. But he was unexpectedly ſtopped in the progreſs of the good fortune which attended his enterpriſes by a ſudden death, and left no iſſue but an infant ſon. Whether the illegality of the ſentence pronounced againſt him was afterwards acknowledged, or at leaſt whether it was thought unjuſt for his innocent ſon and poſterity to ſuffer by it, it appears that Henry the Lion was not only reſtored in the year 1156 to his Dutchy of Saxony, the poſſeſſion of which his father had defended by force of arms, but to that of Bavaria likewiſe, with which the Margrave of Auſtria had been already inveſted; but that Prince was indemnified by having his title of Margrave of Auſtria converted into that of Duke, and being indulged with the extraordinary prerogatives which I have already mentioned.

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A. C. 1138.

A. C. 1156.

(*a*) See p. 142, where Otho, the nephew of the Emperor Otho II, was at the ſame time Duke both of Bavaria and Swabia.

BOOK II. A.C. 1180.

The consequences of the second proscription, which Henry the Lion himself was obliged to submit to in the year 1180, were more unfortunate *. The real political cause of this proscription was

* In the whole course of history perhaps no character occurs where the instability of human grandeur affords a more striking lesson than in the varied history of Henry the Lion, the noble, but unfortunate ancestor of the illustrious House of Brunswick. After the misfortunes and death of his father, he rose like a phœnix from his ashes; but he rose only to suffer a more tremendous fall. In the year 1155 he accompanied the new Emperor, Frederick Barbarossa, to Rome, where he went to be crowned by the Pope, according to the custom of the times. Pope Hadrian IV desired that the Emperor should hold him the stirrup; and it is said that it was Henry who dissuaded him from this ignominious service: Frederick indeed refused for a long time to comply, till it was proved that Lotharius II, one of his predecessors, and grandfather of Henry the Lion, had done the same. It happened that the Emperor laid hold of the wrong stirrup, which much incensed the Pope: Frederick answered, that he had never been bred a groom, and that it would be of no importance to *Peter*, in honour of whom he did this service, whether he held the right stirrup or the left.

The Romans, at the instigation of the Pope, attempted to oppose the public entry of Frederick into Rome, and stopped him upon the bridge of the Tiber. Henry, in conjunction with the Emperor, fell upon the Romans with the utmost bravery. It happened that Frederick had advanced too far among them; he was lost, and his life almost despaired of. Henry rushed into the midst of the enemy, and luckily rescued the Emperor, whilst he lay already under the horses feet. Above eleven hundred Romans were killed in this rencontre, and Henry received a wound in his face. The blood gushed out, which Frederick wiped off, calling him his saviour, and promised never to forget, as long as he lived, the danger he had exposed himself

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was probably no other than the predominating power of the family, which produced the ſame effect in the time of his father, eſpecially as Henry, after he was divorced from his firſt wife, by whom he

ſelf to for his ſake. On their return to Germany, the Emperor granted him many privileges, and reſtored him to his father's dominions. Beſides the fiefs which he held of the Emperor, he had large allodial eſtates; and the Princes of Pomerania and Mecklenburg acknowledged themſelves his vaſſals. His dominions were equal in ſize to his father's, and were bounded, like his, by the Mediterranean and the Baltic ſeas. In the year 1168, in the height of his glory, he was married to Matilda, the daughter of Henry II, King of England, after divorcing his former wife in compliance with the will of the clergy, who complained that ſhe was too nearly allied to him. In 1171 Henry, out of devotion, undertook a journey to the Holy Land. About a thouſand people were in his retinue, the greateſt part friends, relations, and vaſſals: wherever he went, he was treated magnificently. The Greek Emperor himſelf received him into his palace, and entertained him with all the ſplendor ſuitable to royalty. At Jeruſalem he was met by the Knights Templars and Hoſpitallers, who conducted him ſafe to the city, where King Almeric waited to receive him. He ſettled a yearly income for the keeping of lamps, and beſtowed a thouſand marks of ſilver upon thoſe who guarded the holy ſepulchre. On his return he met with a very honourable reception from the Turks; and, in ſhort, was every where conſidered as the admiration of the world. His power, which was riſen to ſuch a height as to exceed that of any other Prince who did not wear a royal crown in Europe, was probably the cauſe which firſt provoked the Emperor's jealouſy, and alienated his affection; but the Emperor was made to feel his power ſtill more when he was under the anathema of the Pope in Italy. Henry was with him, and ſuddenly reſolved to march his army back, to the defence of his dominions in Germany. Frederick intreated him to ſtay;

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had only one daughter, had feveral fons by a fecond marriage. The hope therefore, that the power of the Houfe would be reduced by his death, was totally annihilated. But another pretence was made now

and hiftorians fay, that he would have thrown himfelf in the moft fupplicant manner at his feet, but that the generous hero refufed to fuffer him, though fome of the officers in his retinue obferved, "that he ought not to refufe the Imperial crown to "be laid at his feet, as he would fo foon wear it on his head." From this period, when Henry was raifed to the very pinnacle of greatnefs, he might date his future downfall. On his return to Germany, he was engaged in contefts with the clergy. Frederick, when he was abfolved from excommunication, was glad of an opportunity of fhowing his refentment, and fummoned a Diet at Worms, under the pretence of inquiring into the merits of the caufe. Henry refufed to appear. He was fummoned to a fecond Diet, but equally in vain. At laft, being accufed of various crimes, the fentence of profcription was folemnly pronounced againft him. The Germanic Princes, who envied his greatnefs, immediately broke in upon his dominions, and tore them from their Lord. The difmembering of fo many fine provinces gave rife to the picture of a beautiful horfe, which as at prefent was then the arms of the family, being torn in pieces, and devoured by ravenous beafts and birds of prey, the former denoting his fecular enemies, and the other the Bifhops. Each had a part of the mangled animal in his mouth; and nothing is faved but the heart, which reprefents the countries of Brunfwick and Luneburg, which have ever fince remained in poffeffion of the family. The ban was publifhed firft at Wurtzburg, and afterwards at Gemunden in Swabia, where Henry was born. His greateft enemies were the martial prelates, many of whom Henry had raifed to their power; but all were now ungratefully combined againft him, and committed the moft dreadful barbarities. No refpect was fhown even to objects the moft facred; churches and monafteries were plundered and deftroyed: neither

now for putting him to the ban of the Empire. At the end of Frederick's unfortunate campaign in Italy, the ill ſucceſs of which was attributed to a miſunderſtanding between the Emperor and

 Henry,

neither females nor infants were ſpared. Nuns were raviſhed in the very churches, and afterwards ſold for ſlaves; prieſts inſulted in the time of divine ſervice, and the ſacred veſſels ſnatched out of their hands at the altar; and this by Chriſtian troops, headed by eccleſiaſtical commanders. Henry attempted a long time to make reſiſtance by force of arms; but Frederick aſſembled a powerful army, and marched againſt him. Every thing now threatened his deſtruction; he was deſerted by his beſt friends, and abandoned to the rage of enemies. In this ſituation, the afflicted Henry thought proper to appear at the Diet of Erfurt. Here he threw himſelf at the Emperor's feet, and entirely ſubmitted to his mercy. So ſtriking an inſtance of the mutability of human grandeur could not but affect the great Barbaroſſa: he beheld a Prince nearly allied to him, proſtrate, and humbled in affliction; a Prince who had once preſerved his life, and whom he had greatly reſpected and loved; a Prince likewiſe who had made all Germany tremble, and who had but lately ſubdued the warlike Venedi. Moved with this ſpectacle, he roſe from his ſeat, raiſed him from the ground, and embracing him, could not forbear ſhedding tears. Henry endeavoured to acquit himſelf of the crimes laid to his charge; but ſuch was the animoſity of his enemies, and ſo much were they intereſted in his ruin, that the Emperor, dreading a rebellion, and finding it impracticable to withdraw his fiefs out of the hands of the different Princes on whom they had been conferred, adviſed Henry to retire to England. In conſequence of this, a decree was paſſed, enjoining Henry to quit the country for three years, and not to return unleſs recalled by the Emperor. Henry complied, and after making a pilgrimage to Compoſtella in Spain, he joined his father-in-law, King Henry, in Normandy, and embarked with him and his Dutcheſs Matilda

BOOK II. Henry, a variety of complaints were made againſt him, for the hearing of which day after day had been appointed, when Henry always neglected to appear. At laſt the ban was publiſhed againſt him, as

tilda for England, where he ſafely arrived in 1184. That very year his Dutcheſs Matilda was delivered of her youngeſt ſon, William, ſurnamed Longaſpatha, from whom the preſent Houſe of Brunſwick is deſcended. At the end of three years he returned to Germany, and reminded the Emperor of his promiſe to reſtore to him his dominions; but he was amuſed again with ſpecious words; and at laſt, at a Diet which the Emperor ſummoned at Goſlar, it was propoſed to him, either to accompany Frederick to the Holy Land, or quit the Empire till the cruſade was over: Henry preferred the latter; but hearing that his only remaining territory was attacked by the Duke of Saxony, by the advice of his brother-in-law, Richard I, King of England, and his ſon-in-law Canute, King of Denmark, he returned again. On his return, he found a new and more violent enemy in Henry VI, the ſucceſſor of the Emperor Frederick, with whom he was a conſiderable time at war. Conrad, Count Palatine of the Rhine, father-in-law of Henry the Lion's eldeſt ſon, employed himſelf afterwards to bring about a reconciliation between the Duke and the Emperor. The city of Salfeld, in Thuringia, was to be the place of interview. Henry ſet out thither, but fell from his horſe, and was carried back to Brunſwick. The Emperor afterwards appointed a place which was not at ſo great a diſtance, where they actually met, and an apparent reconciliation took place. The Emperor promiſed a great deal, but with no intention to perform. At laſt the venerable Duke, after repeated attempts to procure his rights, and as frequent diſappointments, died in the city of Brunſwick, in the month of Auguſt, 1195, in the ſixty-ſixth year of his age, a monument of the uncertainty of human greatneſs.

Schmidt's Hiſtory of Germany, Vol. IV, p. 106.
Nugent's Hiſt. of Vandalia, Vol. I, p. 359, Vol. II, p. 19—51.
Rimius's Memoirs of the Houſe of Brunſwick, p. 42.

as a puniſhment for his diſobedience to the ſummons. As it was not unuſual for ſuch proſcriptions or ban to be recalled, if remonſtrances were made within a year and a day, Henry had leſs reaſon to be apprehenſive of the conſequences, eſpecially as he was certain that the accuſations were groundleſs, and was convinced that the manner in which the court had been held, and the ban publiſhed, was in many reſpects illegal.

The form of the tribunal appeared indeed to be ſo far conſtitutionally legal, as a number of Princes were aſſembled for the purpoſe; and the principle therefore, that no one ſhould be condemned, except by his equals, was ſtrictly adhered to. But it follows of courſe, that a court of judicature ought only to conſiſt of impartial judges, and not of ſuch perſons as are the enemies of him upon whom they are to paſs ſentence. The complaints, therefore, which Henry the Lion made againſt theſe proceedings, were unqueſtionably well grounded, becauſe Philip, the Archbiſhop of Cologne, and others, who had already appeared as his accuſers and opponents, were appointed to be members of the tribunal before which he was ſummoned to defend himſelf. Henry appealed, moreover, to an ancient cuſtom, by virtue of which no court of judicature could be held over a Prince of Germany out of his native province; and as Henry was born in Swabia, he thought himſelf under no obligation of appearing

 before

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before any tribunal out of that country. In ſhort, Henry imagined that he had juſtice on his ſide, and flattered himſelf with the hope of carrying his point by the ſword with the ſame ſucceſs which had attended his father; but this expectation failed. At firſt indeed ſome of his attempts were not wholly unſucceſsful; but he was at laſt obliged to yield to a ſuperior force; for Frederick marched againſt him in the year 1182 with the united power of a conſiderable part of Germany, and reduced him to ſubmiſſion at Lubeck.

The conſequence of this victory was the total partition of the territories which had been hitherto in the poſſeſſion of the Guelphic Houſe; an event which has been in many reſpects of the greateſt importance, even to the preſent day. Bernard of Anhalt, the ſon of Albert, ſurnamed the Bear, who procured the grant of the Dutchy of Saxony, did not obtain it in its former ſtate. That part of the Dutchy which was in Weſtphalia, came chiefly into the poſſeſſion of the Archbiſhops of Cologne, who have ever ſince retained it under the name of the Dutchy of Weſtphalia. Other parts of it were added to the Sees of Mentz, Magdeburg, Bremen, Paderborn, Hildeſheim, Verden, and Minden. A great deal of the Guelphic property conſiſted in patrimonial eſtates, or fiefs held from Biſhopricks which were not forfeited by this proſcription. Bernard of Anhalt however, notwithſtanding the remonſtrances of the Guelphic Houſe,

aſſumed

assumed the title of Duke of Saxony, which was in this manner transferred to quite a different part of the country. He built the castle of Lauenberg instead of the castle of Erteneburg, which Henry the Lion had destroyed, and the city of Wittenberg, in the present electoral circle, which his father, Albert, surnamed the Bear, had seized from the Venedi. From these two places, his posterity, which was afterwards divided into two branches, derived the denomination of Saxe-Lauenburg and Saxe-Wittenberg. Both countries were originally Venedic, and only derived their dignity of Saxon Dutchies from the personal titles of their possessors.

The Princes of Pomerania, who had been subject to Henry the Lion, were raised, in the year 1181, to the dignity of Dukes, and Lubeck was made a free imperial city in 1182. The Princes of Mecklenburg, likewise, whom Henry had treated as his vassals, and who, after his fall, were almost wholly subject to the Danes, became again immediate states of the Empire in 1225; which was fully established by a defeat of the Danes, at Bornhövede, in the year 1227. (*a*) This ancient princely family, though divided into several branches, has preserved its flourishing state, from that period to the present day (*b*); and its connexion

(*a*) Rudloff's Hist. of Mecklenburg, Vol. I. p. 237.

(*b*) For the descent of this ancient House from Niclot, who died in the year 1161, and his probable descent from the ancient Kings of the Obotriti, see Dr. NUGENT's History of Vandalia, Vol. I. Appendix I. p. 435, 440, and the Authors cited in Rudloff, Vol. I. p. 99.

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nexion with the Germanic Empire was conſiderably ſtrengthened by the ducal title, which was granted to the Houſe by the Emperor Charles IV, July 8, 1348 (*a*).

In Bavaria the Houſe of Wittelſbach was much more fortunate, and obtained the entire poſſeſſion of the Dutchy in the ſame ſtate as it has continued to the preſent day, except that the new Dutchy of Meran was formed in Tyrol, and Ratiſbon declared a free imperial city. The new Ducal Houſe of Wittelſbac did not meet with ſo much oppoſition from Henry the Lion and his offspring, on account of this Dutchy, as the Houſe of Anhalt did, on account of the Dutchy of Saxony. Otho IV, was prevailed upon to ſign an inſtrument (*b*) in the year 1208, by which he renounced his claims in favour of Duke Lewis

(*a*) Rudloff, Vol. II. p. 298.

(*b*) The following are the chief contents of this inſtrument, which has been preſerved in the archives of Munich ever ſince the year 1208. " Otto quartus, D. G. Rom. Rex et ſemper Auguſtus. Notum facimus—quod nos inſpecta devotione, quam circa promotionem noſtram, illuſtris vir *Lodevicus*, *Dux Bawarorum*,—erit omni tempore habiturus,—confirmamus tam *ipſi* quam univerſis ſuis ſucceſſuris *hæredibus* Ducatum Bawariæ, cum univerſis terris et poſſeſſionibus, quas idem Dux adhuc vivente anteceſſore noſtro—in manu ſua et poſſeſſione tenuit. Et cum fratribus noſtris H. Palatino comite Rheni, et W. Duce taliter ordinavimus, quod de bonis et hominibus quondam incliti patris noſtri *adverſus Ducem Bawariæ et hæredes ejus* nunquam actionem habebunt." *Orig. Guelf.* Tom. III. Præf. Par. II. p. 33.

Lewis and his iſſue; which, as it is not unlimited, but only drawn up in favour of the Houſe of Wittelſbach, may always ſerve as an irrefutable legal authority for the Houſe of Brunſwick-Luneburg, if it ſhould ſurvive the Houſe of Wittelſbach, to revive its claims to the rights of the Guelphic family; and the Brunſwick offspring will, in that caſe, have a nearer claim upon the Dutchy of Bavaria than any other Houſe whatever (*a*).

Notwithſtanding all this, Henry the Lion ſtill preſerved the territories of Brunſwick, Nordheim, and Luneburg, which he had inherited from the anceſtors of his mother, and his grandmother Bruno. He continued likewiſe to enjoy his title of Duke; and his ſons, Henry, Otho, and William, did the ſame; who, at firſt, as was frequently the caſe at that time with brothers, held the

(*a*) In the Roman code of laws is a well-known paſſage, L. VII. Par. 8. D. de Pactis, where we find it very properly ſaid, "Pactorum quædam in rem ſunt, quædam in perſonam. In rem "ſunt, quoties generaliter paciſcor: *ne petam*; in perſonam "quoties, ne a perſona petam, id eſt, "*Ne a Lucio Titio petam.*" This very juſt diſtinction between two different ſorts of treaties, particularly includes acts of renunciation; where it is evident, that it is a very different caſe, whether I renounce a right abſolutely and without reſerve, or whether I only renounce it in favour of particular perſons and their iſſue. Here the application is clear: The anceſtors of the Houſe of Brunſwick-Luneburg declared, in the year 1208, that they would make no claims of their right to Bavaria upon Duke Lewis and his heirs; but this act of renunciation muſt certainly loſe its force as ſoon as the iſſue of the abovementioned Duke becomes extinct.

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the eſtates in common till the year 1203, when they ſeparated and ſettled at Zelle, Brunſwick, and Luneburg. Henry the Lion lived to ſee his hopes, that his family would procure the Palatinate of the Rhine as ſome compenſation, fully accompliſhed; for his eldeſt ſon Henry married Agnes, a Princeſs of Staufen, whoſe father Conrad was Count Palatine of the Rhine, and actually got poſſeſſion, afterwards, of the Palatinate: but he loſt this again by being put to the ban in 1215; and the Palatinate came, with his daughter Agnes, who was married to Otho, Duke of Bavaria, again out of the Guelphic family, into the poſſeſſion of the Houſe of Wittelſbach.

At laſt, in the year 1235, every thing was ſettled on the footing it is at preſent, by virtue of an agreement publicly concluded between the Emperor Frederick II. and Otho ſurnamed the Boy, who was the only remaining grandſon of Henry the Lion, by his younger ſon William. This Otho gave up his patrimony of Brunſwick-Luneburg, as a fief, to the Emperor, and received it again in the quality of a Dutchy annexed to the city of Brunſwick and caſtle of Luneburg. The examples have already occurred, of the Dukes of Zähringen and Meran, who took only the names of caſtles, inſtead of the original Dutchies being called after whole nations, as Bavaria, Saxony, Swabia, and Franconia. It appeared to be a general principle now, that the fief of a Prince ought at leaſt

to

to be annexed to a city and a caſtle; as in the year 1292, afterwards, the city of Eſchwege and the caſtle of Boineburg were granted as the ſeat of the Landgraviate of Heſſe. This explains the reaſon why the two places, Brunſwick and Luneburg, give a compound title* to this Ducal Houſe. It would be a very erroneous idea, if we were to conſider the tranſaction of 1235 as an elevation of rank, as many families of Counts have been raiſed ſince to the rank of Princes. The caſe here was totally different. The Princes of the Guelphic Houſe aſſerted, that they were unjuſtly deprived of the title of Dukes of Saxony, and that they had a much greater right to it than the Princes of the Houſe of Anhalt, who had never been eſtabliſhed at all in the country which was properly called Saxony. They always kept poſſeſſion of the Ducal title; and it was never diſputed that the rank of Princes belonged to them by birth, as much after that period as before. The only agreement now made, was, that they ſhould no longer derive their ducal title from Saxony, but from their own patrimonial territory of Brunſwick-Luneburg. An Allodial Dutchy, which conſiſted only of patrimonial eſtates, and not of fiefs, was conſidered, however, at that time, as contrary to the conſtitution. For this reaſon, the patrimonial eſtate was obliged to be firſt converted into a fief; but this was not

* A title ſtill common to all the branches of the family, who are called Dukes of Brunſwick-Luneburg.

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not at all to be looked upon as an elevation of rank. It was highly proper, therefore, that many other advantages ſhould be ſtill conditioned; ſuch as, that notwithſtanding the quality of fiefs, after the extinction of the male line, daughters likewiſe ſhould enjoy the right of ſucceſſion; and that the tenths of the Hartz mines, which formerly belonged to the Kings, ſhould be given up to the Dukes, as territorial Lords.

CHAPTER

CHAPTER XI.

Further Revolutions in Italy and in the Church, during the Reign of Frederick I, Henry VI, Otho IV, and Frederick II, particularly the new Undertaking of Pope Innocent III. 1152—1235.

The attempt of the Romans to render their State free, and the ſeat of the Emperors, fruſtrated—Sicily obtained by force for the Houſe of Hohenſtaufen—Important undertaking of Pope Innocent III.—Oppreſſion of the Waldenſes—New Orders of Franciſcans, Dominicans, and other Mendicants—Eſtabliſhment of the Inquiſition—The Pope uſurps the right of diſpoſing of Biſhopricks, Abbeys, and other benefices, and claims pre-eminence over Emperors and Kings—Introduction of the interdict—The Eccleſiaſtical Councils treated with contempt—Tranſubſtantiation made an article of faith.

THOUGH the proſcription of Henry the Lion anſwered the political purpoſes of the Imperial Houſe of Hohenſtaufen, the conſequences of the enterpriſes of this Houſe in Italy were quite the reverſe. The Emperor Lotharius had already laid a bad foundation, by ſubjecting the Imperial dignity to the Pope's uſurpation of a ſort of feudal ſupremacy, which Conrad might perhaps ſtill have been able to remove, if the cruſade, which was on this account more zealouſly urged, had not intervened. This circumſtance prevented him from complying with the

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the invitation of the Romans, who juſt at this period had a plan in agitation of depriving the Pope of the government of Rome, by eſtabliſhing a Senate, and reſtoring the ancient ſtate of republicaniſm, without derogating from the Emperor's ſupremacy. Frederick I. was not aware of the advantages of this innovation, and left every thing on the footing it was before with the Papal See. He fell ſoon afterwards however into a miſunderſtanding, not only with the Pope, but with the cities of Lombardy; nor was he able, with all the hardſhips which he inflicted on the Milaneſe, to effect any thing in ſeveral campaigns; but was at laſt obliged to ſubmit, in 1176, againſt his will, to the ſame Pope whom he had before oppoſed in a conteſted election; and in 1183 he was under the neceſſity of entering into a treaty of peace at Conſtance with the allied cities of Lombardy, by which they ſecured in a great degree their republican form of government, and left but few prerogatives remaining to the Imperial ſupremacy.

On the other ſide indeed Frederick I. procured the crown of Sicily, which was eſtabliſhed in the time of Lotharius, for his ſon, Henry VI, who left it at his death to his ſon, Frederick II: but this Prince was on this very account involved again in greater trouble, which Innocent III, who was then Pope, took the moſt active part in. He contrived not only to ſet aſide what Henry VI. had undertaken to the prejudice of the Papal ſupremacy

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at Rome, and in the ecclesiastical territories; but in the course of the eighteen years during which he enjoyed the Pontificate, many other things were introduced, which have since had the greatest influence on the circumstances both of the Church and State.

CHAP. XI.

At the conclusion of the twelfth century, Peter Waldus, a merchant of Lyons, having discovered some errors in the state of the Church, made several attempts to effect a reformation. He was persuaded that the prerogatives of the Pope and the Bishops, the doctrines of purgatory, absolution, saying of masses for souls, invocation of saints, prohibition of the marriage of priests, &c. had no foundation in holy writ: it was his opinion likewise, that in the administration of the sacrament, the cup ought not to be denied to the laity. He considered the Bible, on the contrary, as the only source of Christianity; and procured several of the principal books of it, particularly the four Evangelists, to be translated into French, and promoted their general dispersion. He did not believe that the preaching of the word of God ought to be confined to those who were ordained, as no reason could be given why one brother should not instruct another. At last he disposed of his estate, and all his property, distributed it amongst the poor, and set out in the character of a teacher. His sect, which acquired from him the name of Waldenses, spread itself in an incredible manner both in Italy and France.

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Amongſt others who encouraged this innovation, was the Count of Toulouſe, who allowed the Waldenſes the public exerciſe of their religion. Pope Innocent III. not only thundered out his anathemas, but ordered a cruſade to be preached againſt them; which was formerly done only againſt the Turks and Infidels. Such were the effects of this, that in the year 1215, Simon, Count de Montfort, with an army of five hundred thouſand men, made himſelf maſter of all the county.

Juſt at this period came, very opportunely, two founders of new Orders of Monks, whoſe object was not a refinement in the practice of devotion, like that of the former monaſtic ſocieties, but, on the contrary, activity in preaching amongſt the people, and the inſtruction and converſion of heretics (*a*). The wealth of the former Monks, conſiſting of extenſive landed property, and other revenues, with which every convent abounded, ſeemed to deprive them of their activity amongſt the people. Both the founders of theſe new Orders, one of whom was a Spaniard of diſtinction, Dominicus Guzman, the other the ſon of an Italian merchant, Francis d'Aſſiſi, were both inſpired nearly at the ſame time with a ſimilar enthuſiaſm, and laid themſelves, and the brethren of their Orders, under an obligation to maintain themſelves by begging. To found a monaſtery of this kind, nothing further was

(*a*) Spittler's Eccleſiaſtical Hiſtory, 2d edit. p. 307.

was requiſite than merely to provide for the building of the cloiſter and the church. Innocent therefore very willingly gave his conſent to the inſtitution of theſe two Orders, the Dominicans or Preachers, and the Franciſcans, or, as they afterwards called themſelves from a ſpirit of humility, the Minorites (*b*). Theſe were afterwards followed by ſeveral other Orders, under the names of Auguſtines and Carmelites; or they were all together denominated Mendicant Friars.

The Pope indulged theſe Mendicant Friars with the privileges of preaching every where, hearing confeſſion, reading maſſes, and granting abſolution,

 without

(*b*) Francis was born in the year 1182 at Aſſiſi, in the Dutchy of Spoleto; and after a ſickneſs occaſioned by the debaucheries of his youth, reſolved in 1208 to lead a pious life, and found a new Order; for which he received the papal confirmation from Innocent III. in 1215. In order to ſpread his Order, he not only undertook conſiderable journies himſelf, but ſent out others for the purpoſe. In 1216 he ſent ſixty of his Monks to Germany: theſe however, from ignorance of the language, were unſucceſsful. His ſecond attempt, in 1221, was much more fortunate: ſince that time we meet with Franciſcans in 1221 at Trident; 1222 at Wurtzburg, Worms, Spire; 1223 at Freyburg, Hildeſheim, Brunſwick, Goſlar, Halberſtadt; 1224 at Nurenberg, Cologne, Mentz, Erfurt, Lindau, Prague; 1225 at Eiſenach, Gotha, Nordheim, Mühlhauſen, &c.—Abele's Magazine for Eccleſiaſtical Law, St. 1. p. 87—98.

Dominicans were ſettled in 1219 at Metz, 1220 at Frieſach in Carinthia, and at Brixen, 1251 at Cologne, &c.—Abele, p. 86.

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without being confined to any particular dioceſs. They ſoon embraced the opinion, which other Orders of Monks had already ſpread amongſt the people, that a part might be ſpared from the ſuperfluity of the good works of a whole Order, to other Chriſtians from whom they had obtained, or expected to obtain, temporal benefactions. This was done by AFFILIATION-letters (*a*) as they were called, which were procured by almoſt every noble family, and every burgher who was in tolerable circumſtances. The Mendicant Orders by theſe means drew together ſuch a concourſe of people, that almoſt all the pariſh churches were deſerted (*b*). On the contrary, there was ſcarcely a town of any conſequence remaining, where ſeveral convents were not erected of Dominicans, Franciſcans, or the other Orders which were afterwards eſtabliſhed of Auguſtines

(*a*) We find examples of ſuch AFFILIATIONS-BRIEFE (or letters of adoption), of the years 1302, 1308, 1341, in Steph. Alex. WÜRDTWEIN, *Subſidiis Diplomaticis Juris Eccleſiaſt.* Tom. I. p. 396, 404; Tom. V. p. 227.

(*b*) Thus the Biſhops, as guardians of the ſouls of their people, and every village-prieſt in his little diſtrict, loſt the love and confidence of the people, and at laſt even the knowledge of the individual members of their communities. Every one flocked to the Franciſcan father as ſoon as he entered the village. The ignorant rabble laughed at the care and admonition of their pariſh clergy. The Franciſcan father abſolved them upon eaſier terms; or at leaſt they had rather confeſs to one who was a ſtranger in the place, and therefore could not be ſo good a judge of the integrity and truth of their confeſſion.—Spittler's Eccleſ. Hiſt. p. 309.

tines and Carmelites (*a*). These convents distinguished themselves likewise from the more ancient Orders of Monks, by not making choice of solitary places and forests, or uncultivated parts of the country, but by immediately settling in populous towns.

CHAP. XI.

Every Mendicant Order now appointed a General, who resided at Rome, and through whom the Papal See might have the most operative influence whereever it pleased, in every country, without any further apprehension of being hindered by the relation in which Bishops, and convents possessed of landed property, stood towards the secular power on account of their estates (*b*). Even in the universities, which would

(*a*) To these were afterwards added the Fraternities, as they were called, where brothers and sisters united, under the direction of one of the four Orders of Mendicants, and communicated their good works to each other. Thus arose the Chaplines under the Dominicans, the Scapulairs under the Carmelites, Girdlers under the Augustines, the Cordeliers under the Franciscans, by whom the laity were incited to contribute the produce of their lands, or money, or somewhat else equivalent, to their convents and churches.

Second Letter of a Layman concerning the Weeds scattered during the Epoch of the Jesuits. Frankfort and Leipsig, 1786. p. 12.

(*b*) If a Pope was at any time disposed after this to cause an insurrection in a kingdom, who were more fit for his purpose than these Mendicant Friars? No other ecclesiastics, and no other monks, mixed so much with the lower class of people, and wandered so far about, as the Franciscans and Dominicans. The

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would otherwiſe ſoon have been taught to feel their excluſive privileges, and which by their happy independence, ſecured to them, partly by their reputation, and partly by the whole nature of their revenues, would have become the reſolute antagoniſts of Papal deſpotiſm. The Mendicant Orders anſwered the purpoſes of the Pontificate; they obtruded themſelves into the theological and philoſophical faculties, and took the oaths enjoined by the ſtatutes, but with a reſervation in favour of the rules of their Order, and the obedience included therein to the Pope; and then they violently oppoſed every decree which was to be paſſed againſt any of the Papal uſurpations (*a*). This, however, ſoon had ſuch an influence on the ſtate of literature in general, that it degenerated every where into mere caſuiſtical arguments, whilſt ſuperſtitions of every kind were more univerſally encouraged amongſt the illiterate and vulgar (*b*).

Nothing could give greater weight to this than the introduction of the Inquiſition. The Dominicans at firſt received a commiſſion to exterminate the

The Biſhops, and the wealthy Benedictine Monks, could not, on account of their landed property, be ſo totally indifferent to the favour or diſpleaſure of the Kings: they would not venture therefore a rebellion, to gratify every caprice of the Pope: but a Monk, whoſe whole fortune conſiſted in a brown cowl and a wallet, had nothing to loſe; he could bid them defiance, like Diogenes in his tub.—Spittler's Eccleſiaſtical Hiſtory, p. 309.

(*a*) Spittler, p. 309, &c. (*b*) Ibid. p. 310.

the remaining heresies in the south of France, to inform against every heretic whom they had attempted in vain to convert, that the secular magistrates might punish him; and when this was unsuccessful, and a College of Inquisition, consisting of a Prelate and three secular persons, which was soon after established in every considerable town, was not sufficient for the business, at last the Dominican Order itself obtained in 1233 an unlimited power to search for heretics, and, without the ceremony of any legal proceedings, to bring them directly to the stake (*a*).

Innocent III, under the pretence of preventing heretical shepherds from stealing into the fold of the Church, contrived to procure for Rome, the immediate disposal of all the Bishopricks, Abbies, and other benefices. He thought himself no less anthorised, likewise, strictly to examine into the merits of Emperors and Kings before they could consider themselves in the secure possession of their crowns. When it did not seem sufficient to thunder an anathema against an individual to enforce his orders emphatically, he had recourse to the dreadful Interdict, by which whole cities, countries, and even nations, were prohibited the exercise of the public worship of God (*b*).

 Thus

(*a*) Spittler, p. 311, &c.

(*b*) What a scene of horror, when a whole land was laid under an interdict! From that moment all public worship of God

Thus the pontifical power of Innocent III. roſe to a greater height than that of Gregory VII. Even the Councils of the Church, which Gregory had treated with reſpect, to promote his own deſigns, were now ſcarcely deigned to be conſulted. Innocent, it is true, nominally convoked a general Council in the Lateran in 1215; but the Biſhops who attended were obliged to ſubſcribe to whatever he thought proper to dictate (*a*); and amongſt other things, the doctrine of tranſubſtantiation was eſtabliſhed in this Council as an article of faith.

God ceaſed. The altars were ſtripped of their ornaments; all the ſtatues of the ſaints, and the croſſes, were thrown to the ground; no bell was heard to ſound; no ſacrament adminiſtered; the dead were not interred in conſecrated ground, but buried promiſcuouſly in the common fields, and their obſequies were not attended with prayers, or any hallowed ceremony. Marriages were not celebrated before the altar, but where the dead were buried: the people did not dare to greet each other in the ſtreets: every object which preſented itſelf, was to announce that the whole country was accurſed. What an indelible impreſſion muſt this have made upon an age overwhelmed in ſuperſtition, which placed the whole of religious worſhip in exterior ceremonies! How muſt a nation have execrated its ſovereign, whoſe ſins had thus deprived a whole country of its temporal and eternal happineſs!—Spittler's Eccl. Hiſt. p. 305.

CHAPTER

CHAPTER XII.

Remarkable Decline of the Imperial Power, and Increaſe of the Territorial Prerogatives of the States of the Empire, in the Reign of Frederick II.

1220—1235.

Two charters of Frederick II. confirming the eccleſiaſtical and ſecular States in their territorial prerogatives—Their territorial power promoted by the provincial States; by which means Germany acquires the form of a compound body of States, ſubdivided into a number of ſmaller ones—Origin and nature of the Imperial Aulic Courts inſtituted at this period—Advantages and diſadvantages of the Courts of Judicature in the ſtate they were now in—Origin and uſe of the Court of AUSTREGUES.

WHEN ſo many means co-operated ſo conſiderably to increaſe the Papal power, and the preponderance of the eccleſiaſtical State, it was on the other ſide equally evident how much the power of the Emperor decreaſed, and the conſequence was raiſed of the Imperial States. Two charters, which the Emperor Frederick II. granted, in the year 1220 to the Spiritual, and in 1232 to the ſecular States, may be conſidered as the firſt foundation of the territorial rights, which cuſtom had brought by degrees to the ſtate they

they were now in, being firſt expreſsly confirmed on the part of the Emperor (*a*).

Both of theſe charters make already a great diſtinction between the towns of the Emperor and thoſe of the Princes. Though the exerciſe of the Imperial ſupremacy was allowed when the Emperor held his public court in any of the latter, as it was generally the cuſtom in thoſe times for the Emperor's court to remove from one place to another; and in that caſe every thing was ſubject to the Imperial ſupremacy, during the time of the reſidence of the court, and eight days both before and afterwards; yet, by virtue of the firſt charter, none of the Emperor's officers were otherwiſe to have any ſort of right in an epiſcopal town, but its own Prince and Lord was permitted to have the whole and ſole enjoyment of power there (*b*). Thus, in the other charter, granted to the ſecular States, likewiſe we find, that every Prince was to have the quiet exerciſe of all his prerogatives and juriſdiction according to the cuſtoms of his country, whether he held it as fief, or it was his allodial property (*c*), beſides the particular ordinances contained in

(*a*) SCHMAUS's Corp. Jur. Publ. p. 4—8. Pütter's Elements of the Germanic Hiſtory, p. 276, 279. Germ.

(*b*) "Princeps et Dominus ejus (civitatis) plena in ea gaudeat poteſtate."—*Corp. Jur. Publ.* p. 5. § 9.

(*c*) "Unusquiſque Principum libertatibus, juris dictionibus, comitatibus, centis ſive liberis, ſive infeodatis, utatur quiete, ſecundum terræ ſuæ conſuetudinem approbatam."—*Corp. Jur. Publ.* p. 7.

in both the charters; ſuch as that the property left by an eccleſiaſtical Prince ſhould not devolve to the Emperor, but to the Prince's ſucceſſor; that the Emperor ſhould not build either caſtles or towns in the territories belonging to the Church; that no new tolls ſhould be eſtabliſhed, nor coinage introduced there, but that ſuch as had been once allowed them ſhould be inviolably preſerved.

Theſe aſſurances from the Emperor, it is true, contained many things which had been tranſmitted by cuſtom, or expreſsly granted before. Upon the whole however it was an important advantage for the States, that they now had a general and expreſs declaration from the Emperor in their favour. With regard to the ſecular States, they did not recollect any more that they were originally only royal officers. Together with their right of inheritance, which was now no longer diſputed, every Prince or Count, and Lord, became the actual ruler of his land; and every Biſhop and Abbot, of the territories annexed to his foundation.

If all the Emperors had formerly been the ſole regents of the whole of Germany, ſuch innovations, which added ſo much to the power of the States of the Empire, by leſſening that of the Emperor, could certainly never have been legally eſtabliſhed without their conſent. It is highly probable therefore, that the Imperial power in the preceding years had become ſo circumſtanced, that it was no longer

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able to ſtand its ground. It was not, however, only on the ſide of the Emperor that this matter could be rendered legally permanent.

It occaſioned therefore an alteration in the government of the convents, the nobility, and cities, which had before conſidered the Emperor alone as their Sovereign, but now became ſubject to Princes and Counts as their territorial Lords, and only conſidered the Emperor as their ſupreme head. For this, a mere declaration of the Emperor would not, according to the genuine principles of government, have been ſufficient. The convents, nobility, and cities, might with reaſon aſſert, that ſuch a change could not take place without their conſent, as no free nation is obliged to ſubmit to any form of government againſt the will of the people. Without their concurrence therefore, the buſineſs would perhaps have been difficult to be accompliſhed, as the executive power was then chiefly veſted in themſelves, as long as the military formed no diſtinct claſs or order of people.

But the ſucceſs of the whole was principally promoted by the provinces themſelves, which found their advantage in having their government in the hands of their Princes or Counts, rather than in the hands of the Emperor. The whole country of Germany was too extenſive for every province, according to the mode of government of thoſe times, to aſſure itſelf of an equal ſhare of the Emperor's

paternal

paternal care and protection; and it was much more likely to expect that the Lord of a province which only consisted of a few quadrate miles, would extend his care over it as the father of his country. On the contrary, the Emperor's power, if it was oppressive to a particular person, either designedly, or by accident, might be extremely dreadful, without the means of resisting it, as in the case of Henry IV. with the Saxons, particularly in the neighbourhood of Goslar, where his residence was rendered exceedingly oppressive by the consequent hardships of feudal service, and the supplies necessary for the maintenance of his court. This was not so much to be dreaded from the territorial power of the Princes or Counts; not only because their power was not so extensive, but because the people were not destitute of means of opposing their Lord if he was disposed to act despotically by force, and at all events by having recourse to the Emperor for aid, as the supreme head of the Empire. But there was no idea of a despotic or unlimited government; for as it was usual for the Emperors and Kings to consult the States of the Empire in matters of importance, it followed of course, that the Princes and Counts, if they were inclined to govern their countries by their own power, were yet obliged to have recourse to the good advice of the Prelates, Nobility, and Cities. In the opposite case, a territorial Lord not only had no coercive means in his power to put any thing in execution against the will of his provincial States; but these, on the contrary, had not only

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only the right of ſelf-defence in their favour, but arms in their hands. Thus, as the territorial power increaſed, the provincial States became of greater conſequence, and the cuſtom was introduced of holding Provincial Diets.

A circumſtance which was very favourable to this was, that the Biſhops and Prelates, as well as the temporal Princes, Counts, and Lords, the former from their religious foundations, and the latter from their family eſtates, which they poſſeſſed as fiefs, or elſe as allodial property, had a ſufficient revenue without ſtanding in need of any eſtate or other income being allotted to them by the States of their country. So far both parties, the territorial Lords, as well as their provincial States, had each their ſeparate revenues. The Prelates and the Nobility likewiſe ſtood for the moſt part in the ſame relation to their peaſants, as the territorial Lord to the peaſants on his own domain. The territorial Lords received a certain annual contribution, under the name of URBEDE. In other reſpects there was no idea, either of any land-tax, or contribution of money, being levied on the ſubjects or their eſtates, without a grant being firſt made for that purpoſe by a reſolution of the Provincial Diet, except on very extraordinary occaſions, when the States granted a ſmall impoſt in conſequence of a particular requeſt.

In

CHAP. XII.

In this manner Germany acquired its singular constitution, distinguished as it is now from that of every other nation of Europe. Although, taken upon the whole, it is true that it remains one Empire, yet it is rather a compound body of States, the individual members of which form each of them particular States again, and are subordinate, as parts to the whole. Thus as many Archbishops, Bishops, or other Prelates, as many Dukes, Counts Palatine, Margraves, Landgraves, or Counts and Lords, as were in possession of territories, formed so many particular States; which taken together so far formed a distinct State again, as they preserved their connexion under one common head. This common head had in those days this in its favour, that there were towns, which, as they were subject to none of the Imperial States, still acknowledged the Emperor alone as their territorial Lord. The Emperors had moreover private domains and revenues; but these, partly owing to their liberality, and partly by their being converted into money either by sale or mortgage, continually decreased.

The most important rights of supremacy which the Emperor continued to exercise throughout Germany, were those of jurisdiction in private causes in which the States of the Empire were concerned, or else in cases where appeals were made to him from their decisions. At the Diet at Mentz, where Frederick II. erected the Dutchy of Brunswick-

Lune-

BOOK II.

Luneburg, a new regulation was made respecting the jurisdiction which was to be exercised in the name of the Emperor, from which some, but without any foundation, derive the present Aulic Council; as, on the contrary, the institution of the present Imperial Chamber, which was made afterwards, had some connexion with it. It was, for instance, determined that there should be a perpetual Judge of the Court, who should sit every day in tribunal in the place of the Emperor, and pronounce sentence in all causes which were brought before him in his name. This institution was actually made. Almost the whole list of the Judges have been discovered in records as they held the office, from the year 1235 till the middle of the fifteenth century (*a*). It was necessary for these Judges to be persons of high nobility, as they were to pass sentence upon people of that rank: but this sentence could not be pronounced according to their own opinions; it was always according to the verdict of a certain number of Judges or Assessors, who were summoned for that purpose. In this respect there was a distinction between the institution of those times, and the present form of tribunals, as there was then no permanent College of Justice, the members of which were always the same; but the Judge only was personally fixed upon. The Assessors were changed, as they

(*a*) Hen. Balth. BLUM. *de Judicio Curiæ Imperialis Germanico.* Frankfort, 1745.—Harpprecht's Writings of the Imperial Chamber, Vol. I. p. 24, 46.

they happened to be at hand, for the decision of every cause. The form of a Collegiate Court of Judicature was afterwards introduced, when the Imperial Chamber was first established as it is at present.

The above-mentioned tribunal had this circumstance likewise in common with the Imperial Chamber, that the Emperor's jurisdiction was not exercised in every cause without limitation. A cause which concerned the person, honour, right, inheritance, or fief, of a Prince or other person of distinction, was reserved for trial by the Emperor himself. A Court of Princes was held, in which the Emperor personally presided. (Thus likewise, even now, the Imperial Chamber has no right of judging in causes which concern whole principalities and counties; but this exception is not made with respect to the Aulic Council, so that the Imperial Chamber seems to have much more relation to the tribunal of the court here alluded to, than the Aulic Council).

The circumstance, that every one should be tried by his equals, according to the mode of administering justice in the middle ages, Princes therefore by Princes, or at least by persons of high nobility, was really an incomparable custom. It was always to be hoped, that every one would best know what was customary amongst persons of his own rank; and none need be under any apprehension that persons of the same rank, who might possibly fall

fall into ſimilar circumſtances, and be judged in their turn by them, would dare to ſpeak without ſufficient reaſon, to their prejudice. It was a great advantage likewiſe, that every thing was conducted in a conciſe and proper manner, without any tedious prolixity, or perplexing the cauſes with ſubtility of argument. Even this however was attended with its inconveniences; for, on account of the Emperor's frequent change of reſidence, it was neceſſary firſt to learn where he actually was, and often make conſiderable journies before ſuch a Court of the Princes could be aſſembled; and then it ſtill remained a queſtion of importance, not only with the Court of the Princes, but with the Court Tribunal, how a ſentence, iſſued in this or the other different place, ſhould be put in execution?

It muſt be attributed to the defects in the courts of judicature of thoſe times, that moſt of the diſputes of the Princes were more frequently decided by private wars and ſelf-defence, than by a legal ſentence pronounced by the Emperor. But as a war is ſeldom put an end to, unleſs a peace is produced through the intervention of a third power; ſo it frequently happened with the wars of the Germanic Princes, that a third Prince intervened, and endeavoured to bring the diſpute to an amicable iſſue by means of arbitration. It was not uncommon for the conteſting parties, when they were weary of hoſtilities, and were diſpoſed to avoid them entirely, to ſubmit to the arbitration of ſome

common

common friend, which in general succeeded better than if they left their cause to the uncertain decision of the Court of the Princes, or the Aulic Judge. This soon occasioned this sort of arbitration to be so common, that we find such intervention of arbitration, or sentences awarded in that manner, much more frequent, in those times, than judgment pronounced by the Emperor or the regular tribunal.

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Many of the Imperial States made particular articles in their compacts with each other, that if any dispute should arise between them or their posterity, it should not be settled either by hostilities, complaints made to the Emperor, or the Imperial courts of judicature, but by means of the intervention of a third State, or by vassals nominated by both parties. This was termed GEWILLKÜHRTE AUSTRÄGE(*a*), optional arbitration; and the custom of such arbitration became so common, that even parties who had made no prior agreement thereon, frequently adopted it. It was considered almost as a breach of decorum, to accuse a Prince before the Emperor, when he had not been previously asked, whether he chose to submit to the arbitration of a third Prince; and still worse of a Prince, when an attempt was made in this manner to compromise matters, if he would not consent to it. But if a cause was once actually referred to arbitration, it was considered almost as a breach of honour not to submit to the sentence thus

(*a*) Statutes of the Imperial Chamber, 1495. Tit. 24.

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thus pronounced. Hence we may conceive how a privilege might arise, which has been considered, even to the present day, as a jewel of the first value by the Princes, and those amongst whom the custom is established; that such a person, when a complaint is alledged against him, cannot be accused in the usual manner before the supreme tribunals of the Empire, but the accuser must first offer to compromise the matter, by the intervention of a third Prince to be agreed upon by both the parties, or else by some other mediator. This is still termed DAS RECHT DER AUSTRÄGE, or AUSTRÄGALINSTANZ; i. e. the right of, or resort to arbitration, of the Germanic Princes.

BOOK III.

Second Period of the Middle Ages.

LATTER SWABIAN EMPERORS, AND SUCCEEDING EMPERORS, AND KINGS OF DIFFERENT HOUSES.

1235—1493.

CHAP. I.

The latter Swabian Emperors, and the first Emperors or Kings of various other Houses.

1235—1308.

Pretended great interregnum, and succession of Emperors during that period—Instance of the deposition of an Emperor in the person of Adolphus of Nassau—Important revolutions in various great houses and countries, in Austria, Carinthia, Thuringia, Franconia, Swabia, and Alsace—Origin of the Imperial cities, Prelates, and Knights of the Empire, in Franconia and Swabia—Variety of associations at this period, particularly the Rhenish and Hanseatic leagues—The Swiss confederacy—A great number of additional tolls established on the rivers and public roads—Introduction of the necessity of the consent of the Electors by means of the so denominated WILLEBRIEFEN, or letters of consent—The Electors seven in number.

FREDERICK II. had scarcely returned to Italy from the Diet which he held at Mentz in 1235, A. C. 1235.
before he was involved in a fresh dispute with Pope Gregory

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Gregory IX, which was at laſt carried to ſuch extremities, that Innocent IV. declared, in the year 1245, at a Council at Lyons, after a formal proceſs, that the Imperial throne was vacant. From this period, till the election of Rudolphus of Hapſburg in 1273, the Catholic hiſtorians pretend that there was a long interregnum. During this however, at the inſtigation of the Pope himſelf, the Landgrave, Henry Raſpo, of Thuringia, was elected, on the 22d of May, 1246, King of the Romans. He died on the 16th of February, 1247; and in the month of October the ſame year, William, Count of Holland, was elected. In oppoſition to theſe, not only Frederick II, during his life, but after his death, which happened on the 13th of December, 1250, his ſon Conrad IV, made pretenſions to the throne. He died on the 23d of May, 1254. William, the Count of Holland, ſurvived him but a ſhort time: he likewiſe died January the 28th, 1256; upon which, in 1257, a conteſted election followed between Richard*, Earl of Cornwall, and Alphonſo of Caſtile; till at laſt, upon the death of the former, April 2, 1272, Rudolphus, Count of Hapſ-

* Richard was brother to Henry III. King of England. Though actually crowned King of the Romans, he had little more than the title; for the troubles in which his brother was involved detained him chiefly in England. On the 14th of May, 1264, he was taken priſoner at the battle of Lewes, in Suſſex, and continued in confinement upwards of a year. He came once over to Germany again before his death; but finding

Hapſburg, was elected Emperor in the following year, and continued on the throne till the 15th of July, 1291.

During this reign the Imperial dignity acquired ſuch a luſtre, that it has never ſince been in want of candidates. Rudolphus himſelf wiſhed to tranſmit the crown to his ſon, by the ancient method of procuring him to be elected King of the Romans; but this very circumſtance, as it was contrary to the wiſhes of the people for the crown to deſcend immediately from the father to the ſon, was a principal reaſon that, upon the death of Rudolphus, Count Adolphus of Naſſau was firſt raiſed to the throne, and after him again Albert, Rudolphus's ſon.

Adolphus of Naſſau was not only deſtitute of the advantages which the examples of his predeceſſors on the throne of Germany promiſed him; but the reſpect due to him was at laſt ſo little regarded, that Gerrard, his own relation, who advanced him, and who was at that time Elector of

finding that his crown was ſupported only by his wealth, which was now exhauſted, and not by the choice of the people, he retired again to England, where he quietly ended his days. His competitor Alphonſo, the King of Caſtile, adopted only the title; for his wars with the Moors rendered it impoſſible for him to quit his own dominions.—Pütter's Elements of German Hiſtory, p. 289. See Hume's Hiſt. of England, Vol. II, p. 182, 214.

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Mentz, and imagined himself to be, in Germany, what the Prince Bishop of Rome was in the whole of Christendom, endeavoured, in an unexampled manner, to dethrone him. He held a formal court, with the concurrence of the Electors of Saxony and Brandenburg, and the Ambassadors of Cologne and Bohemia; before which Adolphus was summoned; and, upon his not appearing, his crown was declared forfeited on account of the crimes he was accused of. But this precedent did not meet with the approbation of the other Electors and Imperial States, so that a legal custom could be grounded thereon for deposing a reigning Emperor. The fortune of arms decided on this occasion against Adolphus; for he lost his life in an engagement with Albert of Austria, and thus opened the way for Albert I. to be unanimously raised to the throne.

During this period some very important revolutions took place in several great houses and countries. By the death of Frederick, surnamed the Valiant, Duke of Austria, June the 25th, 1246, the male line of Bamberg Austria became extinct. His eldest sister, Margaret, had been married to Henry VII, King of the Romans, the son of Frederick II.; and by this marriage two sons were produced. Both of these, indeed, were already dead. The Emperor Frederick however made this a pretence for laying claim to Austria. Constantia, another sister, had been married to Henry, Margrave

grave of Misnia, to whom the provincial States of Austria sent an invitation by means of deputies. These deputies were detained by order of Ottocar of Bohemia, who married Margaret, the Dowager Queen of the Romans, and seized the Dutchy of Austria, together with Stiria and Carniola. But afterwards, upon some dispute between Ottocar and Rudolphus of Hapsburg, about his election to the Imperial throne, Rudolphus declared his territories to be vacant fiefs of the Empire, and obliged Ottocar to resign them; upon which Rudolphus at first procured his son Albert the government, and afterwards the hereditary investiture of them, from the Empire.

In the year 1269, Ottocar had likewise taken possession of the Dutchy of Carinthia by virtue of a purchase agreed upon with the late Duke Ulrick; but here likewise he was obliged to yield, by order of Rudolphus, to Mainhard of Tyrol, whose daughter Elizabeth, Rudolphus's son Albert had married; and, by virtue of an agreement then made, after the extinction of the male line of Tyrol, which happened in the first descent, he brought this Dutchy likewise into his family. Thus Rudolphus of Hapsburg reaped unexpected advantages from the Imperial dignity, by acquiring for his House the countries of Austria, Stiria, Carinthia, and Carniola, which have continued ever since their principal dominions.

Another

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Another vacancy was occaſioned by the death of Henry, the Landgrave of Thuringia, February 16th, 1247, who has been already mentioned as conteſting the regal title, and who was the laſt male of his family. This occaſioned a war concerning the ſucceſſion, between the anceſtors of the preſent Houſes of Saxony and Heſſe. Henry, Margrave of Miſnia, the ſame who was engaged in the diſpute concerning the ſucceſſion to Auſtria, and from whom the preſent Saxon Houſe is deſcended, in conſideration of his mother Judith's being a ſiſter of the late Landgrave of Thuringia, obtained from the Emperor the reverſion of the Imperial fiefs which had been in his poſſeſſion, and formed the Landgraviate of Thuringia, and County Palatine of Saxony. But a daughter of Lewis, the late Landgrave's brother, named Sophia, had been married to Henry, Duke of Brabant, by whom ſhe had a ſon called Henry, who was the anceſtor of the preſent Houſe of Heſſe. This Sophia of Brabant laid claim to all the allodial eſtates; amongſt which was reckoned the city of Eiſenach, and ſeveral other places in Thuringia. Theſe the Margrave Henry refuſed to reſign; which in the year 1256 occaſioned a war, which was concluded in 1264, upon condition that both Sophia of Brabant, and her ſon, ſhould reſign their pretenſions to all the places in Thuringia, and be contented with the country of Heſſe. In the part belonging to Heſſe was included a piece of land

on

on the Werra, which the Houſe of Brunſwick was on this occaſion obliged to ſuffer the loſs of. Duke Albert of Brunſwick had given aſſiſtance to Sophia of Brabant and her ſon, with whom he was doubly allied. On the 28th of October, 1263, he was taken priſoner near Wettin, by the ſon of the Margrave Henry, and was obliged to make this ſacrifice in order to procure his liberty (*a*). The title of Landgrave of Thuringia continued for ſome time in diſpute, till the year 1292, when Adolphus of Naſſau declared Heſſe itſelf to be a Landgraviate, much in the ſame manner as Brunſwick and Luneburg were declared a Dutchy in 1235. Henry of Heſſe reſigned his territory, which was till then allodial, as a fief of the Empire, and received it again from the Emperor Adolphus as a Landgraviate, annexed to the caſtle of Boineberg, and the town of Eſchwege. The Houſe of Heſſe reſerved no part of Brabant. An elder ſon, whom Henry II. had by his firſt wife, viz. Henry III, tranſmitted it to his male line. This indeed, in the year 1355, became extinct; on which account claims have been mentioned, of the Houſe of Heſſe on Brabant; but the ſeparation of the two brothers, Henry of Brabant, and Henry of Heſſe, was conſidered

(*a*) The places which were at that time given up by the Houſe of Brunſwick to the Houſe of Heſſe, were Eſchwege, Allendorf, Witzenhauſen, Furſtenſtein, Arenſtein, Bielſtein, Wannfried, Ziegenberg, and Sontra.—Account of the remarkable Occurrences in Saxony, p. 305.

ſidered as perpetual (*b*); on which no mutual right of inheritance could ever be grounded in future.

The three Dutchies of Franconia, Swabia, and Alſace, which Conradin, the ſon of Conrad IV, King of the Romans, was at laſt in poſſeſſion of, experiênced a contrary fate; for when that Prince went to Naples to reſcue his paternal kingdom from Charles of Anjou, after loſing a battle on the 23d of Auguſt, 1268, at Palenza, he was beheaded on the 29th of October, 1269, at Naples *, and left none

(*b*) In the German, TODTHEILUNG, which ſignifies ſuch a partition of an eſtate, as prevents any future claim on the lands ſo ſeparated, from the other branches of the family.

* The unfortunate end of Conradin is one of the moſt remarkable events which ſtain the hiſtory of thoſe troubleſome times. His right to the crown of the two Sicilies was indiſputable: he aſſumed the title of King, and being excited by the party of the Gibelines, which was then very powerful, in oppoſition to the Guelphs in Italy, reſolved to hazard every thing for his crown. Charles of Anjou had firſt made himſelf maſter of the kingdom, in oppoſition to Manfred, a natural ſon of Frederick, over whom he gained a complete victory, and Manfred himſelf was ſlain. On Conradin's arrival in Italy, he had recourſe to France for aſſiſtance; and putting himſelf at the head of a powerful army, encountered his antagoniſt, who was already in poſſeſſion of the country. After a battle fought for three hours, with equal fury on both ſides, Charles charged the wearied forces of Conradin with a body of reſerve, and totally defeated them. Conradin, with his couſin, Prince Frederick of Baden, the faithful companion of his dangers, betook themſelves to flight. At Aſtura, in the territories of Rome, they took ſhipping in the diſguiſed habit of grooms, with an intention of eſcaping to Piſa, but were betrayed

none to succeed him in the Dutchies above mentioned. Every one therefore took as much advantage of this revolution as he could. The Houses of Baden and Würtenberg in particular, as well as

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trayed into the hands of Charles by the master of the vessel, and committed to prison at Naples. Charles some time after resolved upon visiting his provinces in France; and not venturing to leave his noble prisoner behind him, in a kingdom full of faction and revolt, he ordered them to be tried by a formal court, which found them guilty of disturbing the peace of the Church, and condemned them to the scaffold. This cruel execution was performed in the market-place of Naples, before the church of the Carmelites, where Conradin lies interred. When Conradin appeared upon the scaffold, he pulled off one of his gloves, and threw it among the crowd, as a mark of investiture to his heir, whom he declared to be Frederick of Castile, the son of his aunt: the glove was carried to the King of Arragon. The Prince of Baden was executed first. The innocent Conradin, who was but sixteen years of age, when he saw his friend's head separated from his body, is said to have taken it up, and kissed it with great tenderness, bewailing the unhappy fate of that Prince, and upbraiding himself as the cause of his death: then he, kneeling, submitted to the fatal stroke; and the executioner was put to death, that he might not live to boast of having shed such noble blood. Pope Clement is said to have advised Charles to this barbarous step, by saying on his death-bed, *Conradi vita, Caroli mors.* Thus perished, by the hands of the common executioner, the last of the Swabian Princes; and some historians have remarked, that the posterity of the Emperor, who bore so implacable an enmity to Henry the Lion, was soon extirpated from the face of the earth by this dreadful catastrophe; whereas the posterity of Henry has flourished through a long succession of ages, and still fills the throne of the British realms with a numerous offspring to perpetuate the illustrious race.

Schmidt's History of Germany, Vol. IV, p. 263.
Nugent's Vandalia, Vol. II, p. 56.

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as others, conſiderably increaſed their power. The Biſhops likewiſe of that country made their advantage by it, although the title of Duke of Franconia, which the Biſhop of Wurtzburg bears, originated much later, and in a very accidental manner (*a*). The advantages of the great ſpiritual and temporal States would have been ſtill more conſiderable, if the States who were of leſs conſequence, and the poſſeſſors of landed property, had not found it their intereſt to form a federal union. This however accounts for the number of Imperial cities and prelacies which aroſe in theſe three countries in particular, and the Nobility preſerving themſelves free from all territorial power, as it laid the firſt foundation of the ſyſtem which aroſe from thence of the immediate Nobility of the Empire, in Franconia, Swabia, and on the Rhine *.

Similar

(*a*) Till the election of Biſhop Sigiſmund, who was by birth a Prince of Saxony, on the 20th of January, 1440, all the former Biſhops had only the title of Biſhop of Wurtzburg, without any further addition to it. Sigiſmund firſt added to his epiſcopal title, that of Duke of Saxony, and bore the Saxon ſword likewiſe in his arms. His ſucceſſor Godfrey, of the family of Shenk of Limburg, which at firſt had only the rank of Barons, and afterwards Counts, not only afterwards kept the ſword, but continued to ſign himſelf Duke, though of Franconia inſtead of Saxony; a title which the Biſhops have ever ſince preſerved.

Vid. Pütter's Caſes of Law, Vol. I. Part II. p. 328, and the authors there cited.

* Theſe Nobility conſtitute a particular body, called in German the Reichsritterschaft, or Knighthood of the Empire, and poſſeſs each of them a ſort of ſovereignty in their different diſtricts.

Similar aſſociations were frequently formed likewiſe in other parts of Germany, for the preſervation of the public peace, particularly amongſt the cities; as in the reign of William of Holland, in the year 1254, ſeventy cities aſſociated on the Rhine: but no aſſociation of this kind was of more importance for ſucceeding times, than a league which was formed in the northern part of Germany, by the cities of Lubeck and Hamburg, in the year 1241, in order to protect the navigation from Hamburg to the northern ocean, by means of ſhips of war, equipped at the public expence, and to ſupply a ſufficient number of men for the ſecurity of the public roads between the Elbe and the Trave. This aſſociation ſo thoroughly accompliſhed its deſign, which all the trading towns at that time ſtood ſo much in need of, that it was ſoon powerfully increaſed (*a*) by the addition of ſeveral other cities,

(*a*) In the year 1247 the city of Brunſwick, which was at that time the ſtaple mart for all wares which came from Italy, and from the ſouthern part of the Empire to the north, joined the aſſociation. Soon afterwards Wiſmar, Roſtock, Stralſund, Griefswalde, Colberg, Stolpe, Stettin, Anclam, Wiſby, Riga, ſucceſſively joined it. In the year 1280 Bremen, in 1284 the cities Gröningen, Kampen, and Stavern in the Netherlands; in 1289 Luneburg, 1293 Elbingen, 1294 Stade, Magdeburg, Halle, Goſlar, and by degrees ſeveral others, not merely maritime towns, but others likewiſe, which were made uſe of partly as factories, and partly becauſe their manufactures, by means of the aſſociation, could be more advantageouſly diſpoſed of. The Imperial cities were the feweſt; but the others received ſuch ſupport, ſometimes even againſt their territorial Lords, that they wanted very little of being perfectly free.

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cities (*a*), and kept the chief poſſeſſion of the navigation (*b*) and commerce (*c*) under the title of the German

(*a*) When the league was in the higheſt ſtate of power, it conſiſted of ſixty-four towns, which contributed each of them their annual quota of money for the ſupport of the perſons employed by them, and other public expences. If we reckon the other cities which were dependent on them, the total number was upwards of eighty. They were all together divided into four quarters, under the four principal towns of Lubeck, Cologne on the Rhine, Brunſwick, and Dantzic.

(*b*) The Hanſe towns raiſed themſelves by navigation to a very conſiderable maritime power. In 1428 a fleet was fitted out from Wiſmar, conſiſting of two hundred and ſixty ſhips, and twelve thouſand men, to make an attack on Copenhagen.

(*c*) There were four general markets fixed upon by the Hanſeatic league for the convenience of trade. For England, Scotland, and Ireland, London; for Denmark, Norway, and Sweden, Bergen; for Poland, Pruſſia, Livonia, Ruſſia, Aſia Minor, and Perſia, Novogrod, and afterwards Narva; for the Netherlands, and High Germany, France, Spain, Portugal, Italy, and Hungary, Bruges, and afterwards Antwerp. The principal advantages of the Hanſeatic league were, the privileges they obtained in foreign countries being ſo very great, that their aſſociates were every where conſidered as natives, and fewer tolls and taxes were required from them than from others.—Möſer on the real Reaſon of the Riſe and Fall of the Hanſeatic Commerce, in his Phantaſies, Vol. I. Berlin, 1775, p. 269. Fiſcher's Hiſtory of the Commerce of Germany, Vol. II. Hanover, 1785—8. p. 1, 126, &c.

* In England they were exempted from cuſtoms; and ſuch was the flouriſhing ſtate of their trade, that in the reign of Henry VII, the London mob, jealous of their privileges, attacked and rifled their warehouſes. The various charters granted to the German merchants, and the commercial treaties with the Hanſeatic league, are to be met with in Rymer's Fœdera. In moſt of the towns included

German HANSE (*a*) for several centuries together; till at last, towards the end of the fifteenth century, various circumstances concurred which hastened its decline (*b*); so that the memory of that famous league, which was once so powerful, is now only preserved by the cities of Lubeck, Bremen, and Hamburg.

Another

cluded in the league were considerable warehouses, and lodging-houses erected for the convenience of the merchants, many of which still remain, particularly at Antwerp, where there is a building containing magazines for the largest quantity of goods, and lodging-rooms for three hundred persons. The Emperor has now converted the building into barracks. A building of the same nature is yet standing in a place called the Steel-yard, in London, called in the old statutes, *Guildhalla Teutonicorum.*—See Anderson's Hist. and Chron. Deduction of the Origin of Commerce, London. 1789.

(*a*) The name of HANSE * was before in use with commercial companies. It now became peculiar to this association, which was not only an association for the sake of commerce, but a real political and military alliance.

(*b*) The reasons, and the history of the decline of the Hanseatic league, are concisely and most solidly developed in Busch's General History of remarkable Occurrences, second edition, Hamburg, 1783, p. 136—140.

At an assembly of the Hanse Towns in 1630, as almost all the other towns kept away, and the rest declared their dissent, the league was renewed only by the three cities of Lubeck, Hamburg, and

* The original meaning of the word Hanse has been much disputed; but it is now generally supposed to have meant, a number of people associated for any certain end.

Another league, which might at its commencement have appeared to be of very little consequence, but which afterwards rose to the rank of an independent power of Europe, and now flourishes under the name of the Swiss Confederacy, originated in the three forest towns, as they are called, of Uri, Schweitz, and Underwalden, where three honest patriots, Walter Furst of Uri, Werner de Staufachen of Schweitz, and Arnold de Melchthal of Underwalden, associated on the 17th of October, 1307, in defence of their ancient liberties and rights, against the usurpations of the House of Hapsburg. After an engagement fought near Murgarten, in the territory of Underwalden, November the 16th, 1315, in which Leopold, Duke of Austria, was defeated, this league was renewed December the 9th, the same year, and made perpetual. It was confirmed on the 23d of March, 1316, at a Diet of the Empire held at Nurenberg by Lewis of Bavaria, who was then Emperor, and had contested the Imperial dignity with a Prince of Austria. In consequence

and Bremen, which have since that time continued the name of Hanse Towns alone.

In the peace of Westphalia, Art. X. § 16, conditions were made by the Crown of Sweden, for the Hanse towns to enjoy the same freedom of navigation and commerce, as before the thirty years war. In reference to this, an article was drawn up likewise in the late election capitulation, 1748, Art. VII. § 2. to preserve and protect to the utmost the commercial cities, particularly those in preference to others which trade for the public welfare on the seas, Lubeck, Bremen, and Hamburg, in their navigation and commerce, their rights and privileges.

consequence of this event, the town of Lucerne joined the league in 1332; Zurich, which was allowed to take place of the other towns, in 1351; the canton of Glaris, and the town and bailiwick of Zug, in 1352; and Berne in 1353: all which places happily preserved their confederal union for a hundred and thirty years, until five other places were added, from which the former were nominally distinguished as the eight ancient places. Neither independence, nor a separation from the Germanic Empire, were the original objects of this confederacy. The only design of an association of the towns, was to defend themselves against the predominant power of the House of Hapsburg, and the Nobility; though it is probable, that the fatal consequences of a war which Maximilian I. undertook against them in the year 1499, might have suggested the idea of forming themselves into a perfectly independent power.

One of the greatest grievances in Swisserland, as well as in all the towns of Germany, and at the same time one of the greatest impediments to commerce, was the heavy tolls with which the principal rivers, such as the Rhine, the Weser, the Elbe, the Oder, and the Danube, were burthened, because almost every State in the Empire, whose territories bordered upon either of those rivers, imposed one, and frequently several tolls, in their respective districts. Many of them had been granted by charters from the Emperors; but it is highly

probable

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probable likewiſe, that many were eſtabliſhed by their own private authority.

At this period an alteration of great importance took place in the Imperial inveſtiture of theſe privileges. The great influence likewiſe which the Electors gradually procured in other affairs, after the excluſive right was granted to them of electing the Emperor, was ſoon the cauſe, that in caſes where it was not neceſſary for the Emperor to convene a council of the whole Empire, it was ſtill conſidered requiſite to have the conſent of the Electors (as in the inſtance of a grant of Henry VII, the King of the Romans, to Leopold, Duke of Auſtria, which is ſtill extant, it is expreſsly mentioned, that it was conferred by the advice and approbation of the Electors) (*a*); and yet, when Ottocar of Bohemia obtained the inveſtiture of Auſtria from Richard of Cornwall, the Electors were not conſulted at all; which circumſtance Rudolphus of Hapſburg made uſe of afterwards as an argument, why this inveſtiture could be legally valid. The natural reſult of this was a general principle, that no Imperial grant could have its perfect legal force, in matters of importance, unleſs the Electors firſt gave their conſent: of courſe, therefore, no grant of an Emperor, concerning reverſions, tolls, or other matters of a ſimilar nature, could be conſidered wholly valid after this period, if they were granted without the concurrence of the Electors: and this was uſually not only

(*a*) Lünig's Imperial Archives.
Spicileg. Eccleſ. Part. Spec. cont. I. p. 6.

only acknowledged by a joint collegiate decree, but by ſeparate letters called WILLEBRIEFE, for which application was ſeparately made to each of the Electors; as in the Heſſian archives, the letters of conſent, of each of the Electors, are inſerted, together with the diploma granted by Adolphus of Naſſau in the year 1292.

With reſpect to the number of Electors, it does not appear to have been merely an accidental circumſtance, that only the three firſt Archbiſhops who aſſiſted at the ceremony of coronation, and the four ſecular Princes who held the high offices of ſtate, together ſeven in number, whoſe preſence was eſſentially neceſſary for an election or coronation, could lay a particular claim to the electoral dignity. Perhaps the number ſeven was the more agreeable on account of the ſeven candleſticks, ſeven pillars, &c. mentioned in the Bible, and becauſe there were originally only ſeven Cardinal Biſhops, who were chiefly concerned in the election of the Popes. At leaſt I find it expreſsly mentioned in a letter from Pope Urban IV, to Richard King of the Romans in 1263, that the Princes who had voices at the election of the Emperor, were ſeven in number (*a*); inſtead of their being ſix or eight, or an unlimited number as before (*b*). A reaſon for eſtabliſhing the number

(*a*) Pfeffinger *ad Vitriar*. Tom. I. p. 159. Amandus *de primis actis a Friederico I. in imperio peractis*, apud Gewoldum *de Septemviratu*, cap. VI. p. 78. n. 69.

(*b*) Innocent III. writes, "tot vel plures ex *his, ad quos principaliter ſpectat Imperatoris electio*." Steph. Baluz. *Epiſtolæ Innocentiæ*

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number ſeven afterwards, was that in the reign of Frederick I, in the year 1184, the office of Arch-Cupbearer was granted to Bohemia, the High Stewardſhip to the Palatinate, the office of Grand Marſhal to Saxony, and the Grand Chamberlainſhip to Brandenburg; and that in 1215, the Duke of Bavaria was appointed Count Palatine of the Rhine. If this was not the caſe, it appears inconceivable why the Duke of Bavaria was not included amongſt the original Electors. A ſcruple indeed ſeems to have ariſen at firſt concerning the Bohemian Electorate, as the matter was conteſted on account of the poſſeſſors of Bohemia being Venedic Princes (*a*). Notwithſtanding this, Rudolphus of Hapſburg had given the King of Bohemia, in 1290, another promiſe not only of the Electoral dignity, but of the office of Arch Cupbearer (*b*), after he had already declared, that though the Palatinate, as well as Bavaria, ſhould jointly enjoy the Electoral honour, they ſhould only have one voice (*c*). This queſtion muſt naturally have come

centii III. Epiſt. 29. Concerning the election of Conrad IV. it is ſaid in Fragmento Hiſtorico ad a. 1237, in Urſtitii *Script. Rer. Germ.* "quem elegerunt Mogantinus et Trevirenſis et Rex Bohemiæ, et Dux Bavariæ, qui et Palatinus Rheni, *conſentientibus ceteris*, qui aderant, tamen *paucis*." Pfeffinger *ad Vitriar.* Tom. I. p. 156.

(*a*) Albertus Stadenſis ad a. 1240: "Rex Bohemiæ non eligit quia non eſt Teutonicus." Ibid. l. c. p. 613.

(*b*) Goldas *Conſtit. Imp.* Tom. II. p. 85. Hert. *de renovato Bohemiæ nexu.* Sect. II. § 10.

(*c*) Gewold de Septemviratu, p. 756. Tolner *Cod. Diplom. Palat.* n. 107, p. 75.

come into agitation, as the Houſe of Bavaria was not only divided into the two lines of Upper and Lower Bavaria in the year 1253, the firſt of which was in poſſeſſion of the Palatinate of the Rhine, but the Palatinate was totally ſeparated from Bavaria, even in this line, in the year 1294 (*a*).

(*a*) Several circumſtances relative to this ſubject are ſtill more accurately explained in Fiſcher's Treatiſe on the Electoral Rights of the Dukes of Bavaria and Counts Palatine of the Rhine; in his Miſcellanies, B. I. (Halle, 1781. p. 17.) and his Treatiſe on the Bavarian Electoral Title, and Indiviſibility of the Palatinate Bavarian Territories connected with it. Berlin, 1785. Vol. II.

CHAPTER II.

Henry VII. Lewis of Bavaria, and Charles IV. 1308—1356. Particularly the Electoral Union.

Removal of the Papal Chair to Avignon—Henry VII—Contested election of Lewis of Bavaria, and Frederick of Austria—The occasion and design of the Electoral Union—Bohemia takes no part in it; but only the six other Electors—The Electors on the Rhine form afterwards other unions—Decree of the Empire respecting the independence of Germany—Election of Charles IV, and Günther of Schwartzburg—Occasion of the Golden Bull.

.C. 1308. I MUST here premise from another province of history, that the principles which Pope Boniface VIII. had carried to so great an extreme, and endeavoured to establish, to enforce the papal authority, even in political affairs, over the temporal powers, and particularly over France, produced the most unexpected consequences; for Boniface not only lost his liberty, but even his life, in the attempt; and Pope Clement V, who was afterwards elected by means of the French interest, was compelled to reside in France. By this circumstance, the Crown of France was enabled to employ the preponderating weight which the See of Rome had hitherto possessed over all the other powers, to its own advantage, as they had the Pope now in their

their own power, and every thing co-operated to render his refidence, and that of all the Cardinals, permanent at Avignon. CHAP. II.

Philip King of France endeavoured to place his brother Charles of Valois on the Imperial throne, through the influence of Pope Clement V.; but his attempt was premature. It only induced the Electors, who had received private intelligence of the French defigns, to accelerate the election; and they unanimoufly chofe Henry, Count of Luxemburg, without paying any regard either to the fon of Albert, or any other competitor. This Prince fucceeded in rendering the Imperial dignity conducive to the advancement of his Houfe, which neither of his two predeceffors was able to accomplifh; for upon the extinction of the male line of Bohemia, of the Venedic race, notwithftanding the attempts of the Houfe of Auftria, and of Henry of Carinthia, who was married to Ann, a fifter of the late King, to procure the crown of Bohemia, he contrived, by marrying his fon John to another fifter of the deceafed Monarch, to raife him to the throne.

The difpute concerning the right of fucceffion to the crown of Bohemia, between Henry of Carinthia and John of Luxemburg, lafted for fome time; and another diffenfion happened in the Houfe of Saxony, of the Arcanian branch, by the electoral title being contefted by the two lines of Saxe-Lauenburg, and Saxe-

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Saxe-Wittenberg. These disputes, after the death of Henry VII, which happened prematurely August 24th, 1313, occasioned a contested election between Frederick of Austria, and Lewis of Bavaria. Cologne, the Palatinate, Saxe-Wittenberg, and Henry of Carinthia, supported the pretensions of, and elected Frederick; whilst another party, amongst whom were Mentz, Treves, Brandenburg, the Duke of Saxe-Lauenburg, and John of Luxemburg as King of Bohemia, were equally zealous in favour of Lewis. This contest was decided by force of arms; for Lewis of Bavaria, after a war which lasted seven years, had the good fortune not only to gain a complete victory over his antagonist, September 28, 1322, in the neighbourhood of Mühldorf, but to take him prisoner. Lewis now supported the party which opposed the Pope in Italy; in consequence of which, John XXII, who succeeded Clement V, adopted such measures, that he not only declared the Imperial throne vacant, on account of the contested election, but claimed the sole right of decision. He commanded Lewis to resign the government; and in consequence of his disobedience, as he was pleased to call it, he not only pronounced his anathema against him, but laid all Germany under an interdict. During this period, Frederick of Austria died; and Pope Benedict XII, who succeeded John, gave Lewis some hopes of a reconciliation with the Holy See; but it was evident that this reconciliation was retarded by the Crown of France.

All this made the Electors feel at laſt how much their prerogatives were in danger of ſuffering, if, when they had once elected an Emperor, and acknowledged him as ſuch, obſtacles ſhould be thrown in the way, and objections made to the validity of the election by a foreign power. On this account, therefore, they adjourned from a general Diet, which Lewis had convened on the occaſion at Frankfort, to Renſe, and there formed, July 15, 1338, the Electoral Union, as it is called, which has continued, from that period to the preſent day, an important baſis of the electoral prerogatives. They reſolved, that the conduct of the Pope and the King of France, reſpecting the Emperor Lewis, was an attack upon the Empire in general, and upon the Electoral College in particular; upon the independence of the former, and the freedom of election of the latter. They united therefore in defence of their electoral rights, which they reſolved to make a common cauſe of, on every occaſion, and to defend each other to the utmoſt of their power. They confirmed likewiſe the baſis of their collegiate conſtitution, by an unanimous declaration, that the majority of voices ſhould decide at every election in future. (This electoral union, ſince that period, has been occaſionally renewed, and in various reſpects extended, particularly in 1559, when it was fully eſtabliſhed, as the Electors individually ſwore to ſupport it in the years 1745 and 1764.) A. C. 133[8]

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The King of Bohemia had no concern with the first Electoral Union, because he was at that time at variance with the Emperor Lewis, and in alliance with France. The only members of it, therefore, were the six Electors of Mentz, Treves, Cologne, the Palatinate, Saxony and Brandenburg. Bohemia was not included likewise in the Union, which the Electors formed afterwards; a circumstance which occasioned Bohemia very early to lose almost all the electoral prerogatives; and the subsequent laws of the Empire, as often as they mention the actual exercise of the electoral rights, only notice six Electors. Four of these, whose territories are chiefly contiguous to the Rhine, or, as they are for that reason usually called, the Rhenish Electors, of Mentz, Treves, Cologne, and the Palatinate, since that time have frequently entered into a particular union, in order that they might afford each other mutual aid on all occasions where they have a common interest.

The first Electoral Union mentioned above, immediately inspired the whole Empire with such a degree of courage, that as soon as the Electors returned from Rense to Frankfort, August 8, 1338, a general decree of the Empire was passed, with the following declaration: "That whoever was elected unanimously, or by a majority of voices, should, by virtue of that election alone, be considered as the actual King of the Romans and Emperor; that there was no necessity for any confirmation or concurrence of the Pope, or

any

any other perſon; and that if any one was accuſed of holding a contrary opinion, he ſhould be declared guilty of high treaſon."

Lewis, placing too great confidence perhaps in this decree, which was paſſed by the Electors and the Empire in general, and ſupported at the ſame time by the publications of ſome Franciſcan monks, who were incenſed againſt the Pontiff, adopted too precipitate meaſures. He undertook even to grant a divorce, and diſpenſe with a forbidden degree in matrimony, that his family, by his ſon's being married to the heireſs of Tyrol, who was divorced from a Prince of Bohemia, might ſucceed to that territory. But by this event, he cauſed Benedict XII, who ſucceeded Clement VI, not only to renew the ſentences which were pronounced againſt him before; but that Pope was enabled likewiſe, by means of five electoral votes, which he drew over to his intereſt, to ſet up another Emperor in oppoſition to him, in the perſon of the hereditary Prince of Bohemia, who appears in the ſequel of this hiſtory in the character of Charles IV. This Prince did not ſucceed during the life of Lewis; and even after his death, Count Günther of Schwartzburg, who was ſupported by other Electors, became his antagoniſt; and it was not till the death of that Prince that he enjoyed the quiet poſſeſſion of the Imperial throne. As all theſe diviſions amongſt the Electors, and conteſted elections of the Emperors, which they produced, were principally occaſioned by the diſſenſions which continually

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arofe refpecting fome particular votes; this was no doubt the grand motive, which induced Charles IV. to devife meafures for the accommodation of the diffenfions, and for preventing them in future, in the celebrated fundamental law of the Empire, known by the name of the Golden Bull, which merits a particular defcription.

CHAPTER III.

The Golden Bull. 1356.

Cause of the Golden Bull being so denominated—Manner of enacting the different articles—Design of this fundamental law of the Empire—Number of Electors limited to seven—The fifth Electorate conferred on the Palatinate, in neglect of the House of Bavaria—In the same manner likewise the sixth, conferred on the House of Saxe-Wittenberg, to the prejudice of Saxe-Lauenburg—Ordinance respecting the right of primogeniture for the future succession in the secular Electorates—with the additional requisite of a legitimate birth, and restriction to the laity—Later introduction of succession according to the right of primogeniture, in those territories which did not belong to the Electors—Guardianship of minor Electors—Rank of the Electors amongst each other—Their functions on public occasions, at the court of the Emperor, or the so denominated Arch offices of the Empire—The hereditary offices attached to them—Mode of electing and crowning the Emperor—Election of the King of the Romans—Vicariates of the Empire, and the prerogatives annexed to them—Particular prerogatives of the Counts Palatine in their judicial capacity—High treason against the Electors—Other prerogatives of the Electors—Ordinances of the Golden Bull against the custom of private war—Particularly against the illegal resignation of fiefs—The disorders occasioned by the prevalence of the custom of private wars not at all diminished.

IT has been customary for many ages, whenever the Emperors executed any acts of importance, to distinguish those particular instruments from others, by A. C. 1356.

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by annexing a GOLDEN BULL to them, as it is called, inftead of the impreffion of the feal being made fimply in wax. This Golden Bull is the feal itfelf, engraved on two plates of gold in the form of medallions, united, and the hollow filled up with wax, through which the ftrings pafs, that attach the Bull to the inftrument. From fuch Bulls as thefe it has become cuftomary to call the inftruments themfelves, to which they are annexed, Golden Bulls; in the fame manner as the decrees of the Popes are denominated Papal Bulls: and thus likewife this inftrument, by having fuch a feal annexed to it, has obtained the appellation of the Golden Bull (*a*). It confifts of five ordinances, which Charles IV. enacted at two general Diets, one of which was held at Nurenberg, January 10, 1356; and the other at Metz, on the 25th of the fame year, with the approbation of the Electors, and in fome meafure with the concurrence of the whole Empire. Thefe ordinances were afterwards fubdivided into thirty principal articles, and promulgated in one public act. An original inftrument

(*a*) This inftrument has no advantage over any other, but in being concifely called the GOLDEN BULL, inftead of which it is ufual to diftinguifh others by fome particular name, as the Golden Bull of Brabant, &c. The Bull itfelf reprefents on the one fide Charles IV, adorned with his infignia, fitting on a throne, to which are added his arms, and his titles round them. On the other fide, the city of Rome is reprefented, with thefe words, "*Aurea Roma,*" and the motto, "*Roma caput mundi regit orbis fræna rotundi.*"

*The contents of the Golden Bull are tranflated in the Modern Univerfal Hiftory, Vol. XXX. p. 481.

inſtrument was granted to each of the Electors, and an authentic copy given likewiſe to the city of Frankfort, which is at preſent generally ſhown to ſtrangers.

The grand object which Charles IV. had in view, when he enacted this conſtitution, was no doubt to prevent the delays which had been continually made with reſpect to the electoral ſuffrages, as he had experienced at his own election; and to place the election of an Emperor, and every thing attending it, in future, on a firmer baſis. All the diſputes which had happened formerly therefore, were for this reaſon finally adjuſted; and it was his intention now to fix certain permanent principles, to be obſerved in future. In both reſpects it was admitted as a ſettled point, that there could not be either more or leſs than ſeven Electors; ſo that in the Golden Bull the alluſion was not forgotten to the ſacred number of the ſeven pillars, and ſeven candleſticks; and another thing which was taken for granted, was, that three of theſe ſeven Electors were to be eccleſiaſtics, and four of the laity.

With reſpect to the eccleſiaſtical Electors, there was no doubt that this honour could only be claimed by the Archbiſhops of Mentz, Treves, and Cologne, who were allowed to precede the ſecular Electors. Amongſt the latter, the King of Bohemia, who at that time was Charles IV. himſelf, obtained the precedency. Beſides what was mentioned on this ſub-

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ject in the Golden Bull, the Elector of Mentz was obliged to grant another particular diploma concerning the electoral vote of Bohemia, as well as the office of Arch Cupbearer, which is connected with it; but it was expressed in such terms, that the King was exempted from actually performing the duties of the office (*a*).

The most important question, which had been already a subject of contention, was now, Whether the second secular Electorate should be annexed to the Palatinate on the Rhine, or to the Dutchy of Bavaria? This question seems to have been already determined by Rudolphus of Hapsburg, that both the Palatine Bavarian Houses should be considered as one, and that they should jointly possess the electoral suffrage. Since that, it was settled by a public compact, which Lewis of Bavaria made in 1329 with his nephews at Pavia, that the two Houses should exercise their right of suffrage alternately (*b*). Notwithstanding this, there is not the least mention of the Bavarian House in the Golden Bull. The Palatinate alone was named as the second secular Electorate. When we recollect that Charles IV. was at first elected Emperor in opposition to Lewis of Bavaria, and that, on the other hand, his consort was a daughter of the Elector

(*a*) Gudenus, *Cod. Diplom.* Tom. III. p. 411.

(*b*) This compact of Pavia has been first placed in its true light in our own time, in F. C. J. Fischer's History of the Bavarian-Palatine Family Compacts, illustrated by ancient Records from the Archives, 1779; and in his Miscellanies, Vol. II. p. 403, 720.

Elector Palatine, one can ſcarcely refrain from the conjecture, that Charles might perſonally have had ſome partiality for the Palatinate, in preference to Bavaria, which might have had ſome influence on this article of the Golden Bull. Lewis of Bavaria, it is true, found an opportunity, as Emperor, of ſeizing the Margraviate of Brandenburg, as a vacant fief of the Empire, in the year 1322, when the Aſcanian-Brandenburg line was extinct, and conferred it on one of his ſons, who was now, in quality of Margrave of Brandenburg, in poſſeſſion of the electoral dignity: but could this be a ſufficient legal reaſon, why his brother ſhould be excluded from the electoral dignity, as Duke of Bavaria? Or ought the obſervation of the particular number ſeven, which ſeemed to interfere between Bohemia and Bavaria, to have contributed to give any ſuperiority over the latter? But however this might be, in the Golden Bull there is not a word mentioned concerning Bavaria as an Electorate. The Bavarian Houſe appears likewiſe in the following hiſtory, till the thirty years war, not as an electoral, but only a ducal one.

Another diſpute which prevailed till now between Saxe-Lauenburg and Saxe-Wittenberg, concerning the electoral vote of Saxony, was in the ſame manner ſo decided, that it will be difficult to acquit Charles of the ſuſpicion of a perſonal partiality. As long as Charles was engaged in a diſpute with Lewis of Bavaria, and Günther of Schwartſburg, concerning the Imperial dignity, Saxe-Wittenberg alone was

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always of his party, and Saxe-Lauenburg in opposition to him. Saxe-Lauenburg was not at all mentioned now in the Golden Bull, and Saxe-Wittenberg inconteſtably acknowledged as Elector. In the year 1437, however, the claims of Saxe-Lauenburg on this Electorate were again renewed (*a*), but without effect. So much have the ordinances of the Golden Bull tended to determine the former diſputes, and thereby perfectly accompliſh their deſign.

They were no leſs ſucceſsful in the principles laid down for future proceedings. It was now finally determined, that as the three eccleſiaſtical Electorates were annexed to the Archbiſhoprics of Mentz, Treves, and Cologne, the four ſecular Electorates ſhould be in future unalterably annexed to the kingdom of Bohemia, the Palatinate on the Rhine, the Electoral Circle of Saxe-Wittenberg, and the Margraviate of Brandenburg. Each of theſe four Electorates was from this period to be indiviſible, and always inherited by the eldeſt ſon alone. Of courſe from this period, neither partition, nor a joint nor alternate poſſeſſion of the electoral dignity, could any longer be thought of.

The only thing which afterwards required to be more preciſely determined was, how the ſucceſſion, according to the right of primogeniture, was to be underſtood, amongſt collateral relations. The Golden Bull

(*a*) Senkenberg's Collection of Manuſcripts and ſcarce Papers, Vol. I. (1745) p. 28.

Bull declares nothing further upon this ſubject, than that if the firſt-born ſon dies without legitimate heirs, the eldeſt of his brethren ſhall ſucceed to the Electorate (*a*). Not long afterwards, in the year 1371, the Elector Rudolphus II. of Saxony died without heirs. His brother Otho had died in 1350, and left a ſon of the name of Albert; but his third brother Wencelaus was ſtill living. Charles IV. here gave the preference to the third brother, and ſet the ſon of the elder brother, who had died before, aſide; probably becauſe he abided by the literal words "elder brother," and therefore gave the preference to the brother who was older than the ſon of the elder brother already deceaſed. In the ſame manner, another caſe occurred in the ſixteenth century, in the Palatinate, where, after the death of Lewis V, Otho-Henry, the ſon of his deceaſed brother Rupert, did not ſucceed to the Electorate, but his third brother Frederick II. At preſent, however, the ideas which prevail concerning inheritance, according to the right of primogeniture, are much more equitable; for the natural age, where only ſeniority is conſidered, is not the rule to go by, but the order of birth, and the part of the family deſcending in that line: ſo that no younger ſon, or any of his iſſue, can claim the ſucceſſion, as long as an elder brother, or any part of his iſſue capable of ſucceſſion, is living. If the caſe had been otherwiſe, according

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(*a*) Golden Bull, cap. VII. § 3. "Si primogenitus—abſque "heredibus maſculis—ab hac luce migraret;—poteſtas electionis— "*ad ſeniorem fratrem* laicum *per veram paternalem lineam* deſcen- "dentem, et *deinceps ad illius primogenitum* laicum devolvatur."

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according to the above example, at the deceaſe of the late King of Pruſſia, the preſent King would not have ſucceeded to the crown, but the King's third brother, Prince Henry, who is ſtill living. But this will never occur again in any of the Electoral or other Houſes which obſerve the right of primogeniture.

The Golden Bull, in order to determine more preciſely the qualifications neceſſary for a ſucceſſor to an Electorate, adds, that he muſt be legitimately born, and a layman. A natural ſon, though afterwards legitimated by the marriage of his parents, cannot ſucceed to an Electorate, without violating the laws of the Golden Bull. An obſtacle generally ariſes here, which, it is true, the Golden Bull does not expreſsly notice, but which might have been looked upon as a matter eſtabliſhed by cuſtom, viz. that no other children than ſuch as are born in marriage, where both parties were of ſuitable rank, according to the very ancient rights of the High Nobility of Germany, can be entitled to ſucceſſion to a territory. Amongſt perſons of equal rank, however, the caſe is not very likely to occur, for the children to ſtand in need of being afterwards legitimated.

The other addition, which relates to the ſecular ſtate, or, as the Golden Bull ordains, that an Elector muſt be a layman, requires a further explanation. In Catholic families it is ſtill very common, where there are ſeveral ſons, for the eldeſt to be devoted

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very early to an eccleſiaſtical life, in order to have a better opportunity of being provided for by rich benefices; whilſt one or more of the younger ſons are deſigned as future ſucceſſors to the eſtates, and at the ſame time to continue the propagation of the family. With the preſuppoſition that the ſame thing might happen in the Electoral Houſes, it was very properly ordained in the Golden Bull, that in caſe any elder ſon of an Elector had made choice of an eccleſiaſtical life, he could not ſucceed to the Electorate, but only the eldeſt ſon, or Prince next following, who was a layman. By this it was not however ſaid, that a Prince, who was an eccleſiaſtic, was abſolutely excluded from inheriting ſecular territories; only with reſpect to the ſecular Electorates, there was ſufficient reaſon for providing againſt any one claiming the poſſeſſion of them, who was prevented by his ſituation in life from preſerving his family from extinction. It might alſo come into conſideration, perhaps, that there were already three Electorates in the hands of the Clergy. As long, therefore, as there was no want of ſecular Princes in an Electoral Houſe, the clergy were with great juſtice ſuperſeded.

If a whole family, except a ſingle eccleſiaſtical Prince, is extinct, whether in that caſe he could not ſucceed? would be another queſtion. In Princely Houſes at leaſt, no objection would be made. That the epiſcopal and electoral dignities are not inconſiſtent with each other, for a Proteſtant Prince, we

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have been already informed by the example of the first Elector of Brunswick-Luneburg (*a*).

The succession, moreover, according to the right of primogeniture, is understood by virtue of the Golden Bull, only of the particular electoral dominions, and not of the other principalities or counties which an Electoral House may otherwise possess. Thus, long after the Golden Bull, the Bavarian House, which was still always considered as a collateral branch of the House of the Elector Palatine, was not only divided into the three lines of Ingolstadt, Landshut, and Munich, but in the Palatinate House itself several divisions were made, such as Palatinate-Simmern, Palatinate-Lautern, Palatinate-Neuburg, Palatinate-Deuxponts (*b*), Palatinate-Veldenz, &c. In the House of Saxony likewise arose long afterwards the different branches of Weimar, Eisenach, Gotha, Altenburg, Coburg, Meinungen, Hilburghausen, &c.

The first regulation of its kind on this subject, was that made by the Elector Albert Achilles of Brandenburg, in the year 1473; by virtue of which, two younger Princes of his issue were to reign in Anspach and Bayreuth. Every thing else which the House

(*a*) Ernest Augustus I. born in the year 1629, was in 1662 Bishop of Osnabruck, and in 1692 Elector of Hanover. He died in 1698.

(*b*) In German, ZWEYBRUCKEN.

Houſe of Brandenburg was then already in poſſeſſion of, or might acquire in future, was to devolve ſolely and entirely to the Prince who ſhould happen to be Elector. Thus, though the right of primogeniture, with all the advantages to be expected from it, was introduced in the Electoral Houſe, yet in the two collateral lines of Anſpach and Bayreuth, proviſion was made, that, beſides the reigning Elector, there ſhould always be two other Princes of that Houſe, who could marry in their own rank, and by that means afford leſs cauſe for apprehenſion that the family would become extinct. Notwithſtanding this, it ſeems probable that the Electoral Houſe will ſoon again ſurvive both the collateral lines.

The right of primogeniture, as it was firſt introduced by the Houſe of Brandenburg, before all the other Electoral Houſes, was evidently the firſt cauſe of its being raiſed to ſuch a remarkable degree of greatneſs; as a further partition could never again be thought of, but every addition of territory was in favour of the reigning Elector. Notwithſtanding this, it was much later before this example was imitated by other Houſes. Many of the Princes, even in the ſixteenth century, denounced a curſe upon any of their poſterity, who ſhould attempt to introduce the right of primogeniture. It was conſidered in ſome meaſure contrary to religion, not to abide by that expreſſion in the Scriptures, "And if children, then heirs (*a*)."

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(*a*) Romans, viii. ver. 17.

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A circumſtance which is uſually connected with the right of primogeniture, that minors frequently ſucceed to the government, has not been left unnoticed in the compilation of the Golden Bull. On this head, it particularly preſcribes, that in that caſe the elder brother of the deceaſed Elector ſhall be the guardian of his nephew, till he has paſſed his eighteenth year; as in this manner Prince Xavier of Saxony, which is the lateſt example we have, was for ſome years the guardian of the preſent Elector. Probably the meaning of the matter being thus ordered was, that in caſe a father ſhould die without leaving directions in his will concerning the guardianſhip of his children, there might be no want of a guardian regularly appointed by law. It is not probable, that the intention of the Golden Bull was, that a father ſhould not be at liberty to appoint a guardian himſelf over his children, which is conformable to all common law: yet notwithſtanding this, two diſputes aroſe afterwards in the Houſe of the Elector Palatine; one, where a Lutheran guardian, appointed by will, was ſet aſide; and another, when a Calviniſt guardian, appointed by will, was preferred to a Lutheran, who was nearer related to the family (*a*). Many people pretend, for this reaſon, that in the Electoral Houſes no appointment of guardians by will, are valid. A principal deſign of this ordinance of the Golden Bull ſeems to have been, that a minor ſhould

(*a*) Pütter's Manual of the particular States of Germany, p. 390, 394.

ſhould have ſome relation of the Houſe for his guardian, and not his mother or his grandmother. CHAP. III.

The rank of the Electors amongſt each other was conſidered by the Golden Bull as already eſtabliſhed in the following order: Mentz, Treves, Cologne, Bohemia, the Palatinate, Saxony, and Brandenburg. They ought to follow each other in this order, in the delivery of their votes; except that the Elector of Mentz, having firſt collected the other ſuffrages, was to give his own the laſt, a cuſtom which is ſtill adhered to. A diſpute however aroſe amongſt the eccleſiaſtical Electors, concerning the places where they were to ſit, in the preſence of the Emperor. The Golden Bull ſettled this, by ordaining, that the Elector of Treves ſhould always ſit oppoſite to the Emperor, and that the Electors of Mentz and Cologne ſhould ſit alternately one on his right hand, and the other on his left, according to the dioceſe, or diſtrict of the Arch-Chancellor, where the Imperial court happened to be held. The Elector of Bohemia and Elector Palatine were to ſit on the right likewiſe, and the Electors of Saxony and Brandenburg on the left. This rule has given riſe at preſent to a twofold diſpoſition, as the Electors either take their ſeats in a line, "*ſecundum lineam*," or according to the two ſides, "*ſecundum latera*." In all proceſſions, the Elector of Bohemia immediately follows the Emperor; Mentz and Cologne go on either ſide of him; the Elector of Treves immediately before him; and the other Electors before him likewiſe,

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wiſe, in pairs: except when they carry the Imperial inſignia, or ornaments, and then the Elector of Treves goes firſt and alone, and the Arch Marſhal or Hereditary Marſhal immediately before the Emperor, carrying the Imperial ſword.

The functions of the Electoral Princes, when the Emperors publicly hold their court, are deſcribed in the Golden Bull, as they were then obſerved according to ancient cuſtom, and as they are ſtill performed at the coronation of the Emperor. The eccleſiaſtical Electors are to give the bleſſing at table, and receive the ſeals made uſe of in all buſineſs executed by the Arch Chancellor; the Elector of Saxony, as Arch Marſhal, is to ride into a heap of oats, and fill a ſilver meaſure full of them; the Elector of Brandenburg, as Arch Chamberlain, is to preſent a ſilver baſon with water, and a fine napkin, for the Emperor to waſh his hands; the Elector Palatine is to place four diſhes of ſilver, full of victuals, upon the Emperor's table; and the King of Bohemia, to preſent a goblet of ſilver, full of wine and water, to the Emperor, to drink.

It is further ordered, that at the performance of theſe functions, each of the Arch officers ſhall have an hereditary officer under him, whom he has himſelf inveſted, and who is to be preſented with the horſe and ſilver utenſils for his ſervices: and in caſe the Electors ſhould be abſent, or by any means be hindered, they are to perform theſe high offices themſelves. The hereditary officers muſt,

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on this account, be all of high nobility. At the time of the Golden Bull, the House of Pappenheim, which had then the title of Baron, but now of Count, was in possession of the office of Hereditary Marshal of the Empire; which that family still holds, with the full exercise of many prerogatives, such as assisting in the superintendance of the police, and making other regulations: as for this reason a Count of Pappenheim has hitherto always been personally present at the election of an Emperor, and maintains a chancery, as Hereditary Marshal of the Empire, at the Diet, at his own expence. The persons who were in possession of the other hereditary offices, since the time of the Golden Bull, have all been changed. The Lords and Counts of Limburg in Franconia were then in possession of the office of Hereditary Cupbearer of the Empire: at present, and ever since the year 1713, it has been held by the Counts of Altham. Instead of the Hereditary Steward of Nortenberg, that office was first held by the family of Seldeneck; and afterwards, in 1594, by the House of Waldburg in Swabia. The Hereditary Chamberlainship was at that time in the House of Weinsberg, afterwards in the House of Falkenstein; and in the beginning of the sixteenth century, it came to the Counts, now Princes, of Hohenzollern.

The mode of proceeding at every election of an Emperor, is described as accurately as possible, with all the various solemnities to be observed on that occasion. The Elector of Mentz, within the space

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of one month after the vacancy in the Imperial throne, is to ſend meſſengers with letters to each of the Electors, to invite them to proceed to an election within three months. Every Elector muſt appear in perſon, or ſend his Ambaſſador inveſted with full powers, as directed by the Golden Bull. The burghers of the electoral city, which is properly Frankfort on the Maine, take a ſolemn oath, that the Electors may enter with ſecurity, and that neither they nor their train need be under any apprehenſion of danger during their reſidence there. The Electors, or their Ambaſſadors, before they proceed to the election itſelf, muſt take an oath preſcribed to them, that they will elect an Emperor to the beſt of their judgment. Each of them muſt give an aſſurance, that he will acknowledge him who has the majority of voices in his favour, to be legally elected. The ſuffrages themſelves are afterwards given in the conclave, or ſacriſty, the doors of which are ſhut. One of the moſt important articles of the Golden Bull conſiſts in the ordinance, that the majority of votes ſhall be abſolutely valid, without the abſence or removal of any Elector being able to prevent it; and that vote ſhall be reckoned likewiſe, which an Elector may give himſelf. At the coronation, which by virtue of the Golden Bull ought properly to be ſolemnized in the city of Aix la Chapelle, but now generally in the ſame place where the Emperor is elected, the ancient ſolemnities are ſtill preſerved, as much as poſſible at leaſt, on account of their antiquity, to the preſent day.

It

It is ſurpriſing that Charles IV, when he enacted the conſtitution of the Golden Bull, did not make ſome proviſion for the election of a King of the Romans, as ſucceſſor to the throne during the life of the reigning Emperor. He might be apprehenſive, perhaps, that the matter would be attended with greater difficulties, if it was ſettled by rule, than if it was paſſed over in ſilence, or left to ſome more favourable period. The cuſtom of former times might already be ſufficiently warranted by the example of an election of a King of the Romans at the time of the Swabian Emperors. Charles likewiſe, after the Golden Bull, procured the election in favour of his ſon Wencelaus. Afterwards, indeed, upwards of a hundred years elapſed before ſuch an election occurred again; but that an election might be made, was, notwithſtanding the ſilence of the Golden Bull upon the ſubject, a determined point.

On the ſame occaſion, when theſe regulations were made in the Golden Bull concerning the election of an Emperor, it was very natural for Charles IV. to take into conſideration how the government of the Empire was to be conducted, during a vacancy of the throne, before the election was finally determined. In this caſe, the Golden Bull ordains, that the Elector Palatine ſhould be adminiſtrator of the Empire, in the countries contiguous to the Rhine, in Swabia, and in ſuch lands which were ſubject to the Frankiſh law; and the Elector of Saxony, on the contrary, in thoſe lands which admit the laws of Saxony. The

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dignity of Count Palatine, which was originally annexed to the office of Judge, was probably the first occasion of the administration of justice, which could least bear suspense or interruption, being expected, even during a vacancy of the Imperial throne, from the Counts Palatine; and by these means, many of those rights, which could not, during an interregnum, with propriety be dispensed with, came by degrees into exercise. This Palatinate administration would properly have extended itself throughout all Germany; but the particular privilege granted to the Saxons, when they were first united to the Franks, probably laid the foundation for the Saxons, or, as the Golden Bull says, "the places or countries where the Saxon law is observed, not to be subject to the Palatinate administration of the Empire, but rather to their own Duke." The proper limits of the two Vicariates of the Empire were first settled on the 9th of June 1750, between the two Courts, which at that time held the Vicariates. The Saxon Vicariate was still to have in its jurisdiction, Henneberg in Franconia, and Paderborn, Osnabruck, Corvey, Oldenburg, Delmenhorst, Hoya, Diepholz, Pyrmont, Lippe, Schaumburg, and Rittberg in Westphalia. To the Rhenish Vicariate, not only the Archbishoprick of Cologne was to belong, but the Dutchy of Westphalia, the Bishoprick of Munster, Principality of Minden, the Abbey of Hervorden, as well as East Friesland, Ravensberg, Tecklenburg, and Bentheim. This treaty, however, has not yet been confirmed at the Diet of the Empire.

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Both theſe Imperial Vicars aſſert a right, as administrators of the Empire, *Proviſores Imperii*, as the Golden Bull calls them, of regularly exerciſing all the prerogatives of the Imperial government. But the Golden Bull appropriates to them only certain prerogatives there mentioned, ſuch as holding courts of judicature, diſpoſing of eccleſiaſtical benefices, receiving revenues, and inveſting with fiefs, except Banner fiefs *, or ſuch principalities which were reſerved for the elected Emperor to grant the inveſtiture of himſelf. They are prohibited, on the other hand, from making any alienation.

The Elector Palatine was, beſides this, indulged with the particular prerogative of holding a tribunal of juſtice in all cauſes where complaints were brought againſt the Emperor, in the place where the Imperial court reſided (probably in the ſame manner as other Monarchs and Germanic Princes ſuffer actions to be brought againſt them in their own courts of judicature, in matters which concern the revenue).

All the Electors were moreover declared to be ſo cloſely connected with the perſon of the Emperor, that if any one attacked the perſon of an Elector, it

* Fahnenlehn, a fief of a ſuperior ſort, which was inveſted by means of a flag inſtead of a ſcepter, *feudum vexilli*. The ſecular vaſſals who had inferior vaſſals under them, and Princes, and Counts, were formerly inveſted with a flag, and others only with a ſcepter, as the Clergy, &c. At preſent they are all inveſted with the ſword, ſo that the diſtinction exiſts no longer.

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was considered in the same light as if an attack was made on the Emperor himself.

Amongst other immunities, it was expressly granted to the Crown of Bohemia by name, but in an equal degree to all the other Electors, that its subjects should not be summoned in the first resort * to the Imperial or any other court of judicature, nor appeal be made in a higher resort to the Emperor, or his tribunals, except in the case of a complaint being made either of the delay or absolute refusal of justice. All the Electors are entitled likewise to the mines of gold, silver, tin, copper, iron, lead, or any other metal, as well as salt-works, in their respective territories. They have a right to coin both gold and silver, to receive tolls, and afford protection to Jews; rights which no other Princes can possess, without an express grant from the Emperor.

These are the principal contents of the Golden Bull, which stand so far in such close connection with each other, that every thing has the Imperial election for its object, and the establishment of all that appertains to it, upon the most permanent footing. In this respect, Charles IV. almost wholly accomplished his design; for the regulations contained in the Golden Bull have, in a great measure, continued in constant practice, even to the present day. Besides this, the enacting

* In German INSTANZ, from the Latin *instantia*, a term made use of in German law, to signify a resort, or appeal from one court of justice to another.

enacting of this Imperial constitution had another object in view, which was to check the horrors of private war, which then prevailed; but this was not accomplished, because an attempt was only made to cut off a few of the branches, instead of laying the axe to the root at once.

No method could be thought of which was likely to remedy this evil effectually, but the total abolition of every species of private war, by putting an end to the practice of self-defence. Instead of this, they still adhered to the ordinance enacted by Frederick I. and Rudolphus of Hapsburg, that such private wars alone should be prohibited, which could not be proved to have been publicly announced three days beforehand. This had been hitherto the means of producing but little order and tranquillity in the Empire; and it might have been foreseen with equal certainty, that it would not be any better in future, so long as this right of declaring the commencement of hostilities prevailed, upon three days notice. All the particular ordinances moreover, which were contained on this subject in the Golden Bull, soon discovered what little hopes there were for futurity, since such abuses which the Golden Bull complained of, still predominated.

Thus, to mention only one example, it frequently happened, that noblemen declared war* even against the

* These private wars were not confined to single combats, or duels; but whole districts, and frequently populous towns, took up arms against each other.

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the liege Lords of their eſtates, without being at all deterred by the cuſtom, according to the feudal law, of a vaſſal forfeiting his fief, if he uſed any violence againſt his Lord. To obviate this difficulty, it was uſual for a vaſſal to ſend a meſſage to his Lord, by which he reſigned his fief, and informed him, that he had quitted the eſtate and property, and left it to his own diſcretion to take poſſeſſion of it. He then actually withdrew from the eſtate with all his own effects, and immediately ſent a ſecond meſſenger with a declaration of war. Hoſtilities now commenced, and the vaſſal ſeized the caſtle again, which he had juſt left, before his liege Lord could derive any benefit from his reſignation. Thus a vaſſal tranſformed himſelf into an enemy, without hazarding his fief. The Golden Bull threatened the perpetrators of this and ſimilar abuſes with infamy, and the ban of the Empire; but the events inform us, that the evil continually grew more inveterate, till it was found neceſſary, almoſt a hundred and fifty years afterwards, to deſtroy it in its ſource, by the abolition of the right of private war entirely.

It is almoſt incredible, how much this cuſtom prevailed in the time of Charles IV.* In a record of the

* There is no doubt but that the right of private war was prevalent, though perhaps not in ſo great a degree, in England. It was in a great meaſure from the exerciſe of this right, that in England, in the age of Stephen, there were above eleven hundred forts and caſtles.—Lord Lyttelton's Hiſtory of Henry II. Vol. I. p. 418. Robertſon's Charles V. Vol. I. p. 286, 287. Steward's

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the year 1362, we find the Counts of Schwartzburg, aided by the Elector of Mentz, making war upon the Margrave of Mifnia, and the city of Erfurt, when they loft forty knights and efquires, who were taken prifoners; and that on the other fide, an officer called de Virneburg, in the fervice of Mentz, took fifty knights and efquires prifoners in this war from the Mifnians and people of Erfurt, whom he confined at Arnftadt. Thefe were obliged, the record fays, to pay the Elector of Mentz two thoufand marks of pure filver for their ranfom*. The Counts of Schwartzburg, however, had fet their prifoners at liberty without the Elector's knowledge, and by that means procured their own people their freedom. In a private war, where the Counts of Schwartzburg invaded thofe of Hanftein, in a village in the territory of Mentz, they burned the people and many of the horfes belonging to the Elector, who had no concern with Hanftein; they broke into ten churches, fet fire to them, and even burned to death the people who were affembled there. In the fame manner, the Counts of Hohenftein ordered four caftellains belonging to Mentz to be hanged. The fame record fays, that they came with a party of two hundred horfemen, in the night, before Duderftadt, where they feized two burghers, and hanged them, without either

View of Society in Europe, p. 260. In the Appendix to this book is a curious proof of the exercife of private war in England, in a truce between two nobles, agreeing to ftop hoftilities, p. 418.

* 16,000 dollars. In Englifh money, about 2,666 pounds fterling.

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either judge or law (*a*). In ſhort, it may be ſafely aſſerted, that in the times of the fourteenth and following century, there was ſcarcely a habitable tract of land, of a few ſquare miles, to be found, which was not almoſt inceſſantly involved in troubles, and diſtracted by the horrors of private war.

It is aſtoniſhing, that in ſuch circumſtances, commerce, trade, and population, could thrive in ſuch a manner, or be preſerved at all, as in thoſe times they actually were. An event which tended chiefly to promote them, was the aſſociation of the towns, ſuch as the Hanſeatic League, and the Swiſs Confederacy. Other aſſociations were as prejudicial to the public tranquillity; particularly ſuch, whoſe numerous members were all of them knights, who called themſelves after certain ſigns, or ſymbols, by which they diſtinguiſhed each other: and if any affront was actually offered, or only imagined, they made the affair a common cauſe, and made attacks ſometimes on towns and their inhabitants, and ſometimes even againſt Princes and Counts. Of this kind were the Knights of the Horn, the Star, the Club, the Knights of the Red Sleeve (*b*), &c. The paſſage in the Golden Bull which expreſſes itſelf

(*a*) Gudenus, *Cod. Diplom.* Tom. III. p. 456, 458.

(*b*) Thus we find a record of the year 1331, in Gudenus, Tom. II. p. 1048, in which the Electors of Treves and Cologne, and the Knights of the Red Sleeve, on one ſide, and Simon de Kempenich, and John de Elzen, on the other, with thoſe who aided both parties, conclude a formal treaty of peace.

itſelf with ſo much zeal againſt all illicit combinations, had no doubt ſuch aſſociations particularly in view (*a*); but the hiſtory of thoſe times contains examples enough, to prove the little effect of the ordinance (*b*).

(*a*) Golden Bull, chap. XV. § 1, 2.

(*b*) I cannot refrain from introducing in this place a lively picture of thoſe times, from Spittler's Hiſtory of Wurtenberg, p. 30, 31.

About the year 1367, ſeveral of the Swabian Knights aſſociated, to perform their deeds of chivalry in good company, and report to each other, where a favourable opportunity offered of diſplaying them, and making all the world their prey. This laudable combination called themſelves Martin's Birds, or Bruiſers, (SCHLÄGELER) becauſe ſilver clubs were the enſigns of their order; and the grand alliance was formed on St. Martin's day. A good opportunity ſoon offered of undertaking a jovial expedition. Count Eberhard, of Wurtenberg, reſided with his whole family, without any ſuſpicion, at Wildbad, quietly enjoying himſelf after the various hardſhips he had ſuffered in the wars. The ſteel of his ancient ſword was brittle with exerciſe. It came into the heads of the Martin's Birds, that they could procure a noble ſum of money here for ranſom; and it was ſport enough for the Knights to take ſuch a prize as Eberhard. Headed by the Count of Eberſtein, they ſuddenly ſurrounded the little town of Wildbad; and, in all probability, every thing that belonged to the Wurtenberg Count or Counteſs would have been their booty, if a ſhepherd had not conducted Eberhard and his family by a footpath between woods and rocks, and fortunately reſcued them. Eberhard could not be a greater enemy to the Imperial cities, than he was now enraged againſt the Martin's Birds, thoſe curſed birds of prey, who fell upon him like a ſet of ruffians, without any previous notice, and attacked him in ſuch a ſudden manner, that he was reduced either to the neceſſity of yielding without a blow, or ſtealing privately away like a coward. Eberhard reſolved upon a bloody revenge; but this was not ſo eaſily accompliſhed:

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for the Count Palatine Rupert, and the Margrave Rudolphus of Baden, were on good terms with the Knights, and laughed with a ſecret pleaſure at the ſurpriſe of Eberhard. They only lamented that the bird eſcaped. Even the Imperial towns of Swabia were obliged, at the Emperor's command, to march to Eberhard's aid. The Imperial banners were diſplayed, and Charles IV. himſelf ſupported his vaſſal. But the zeal of theſe confederates ſoon cooled, and Eberhard alone was not ſtrong enough to puniſh his enemies himſelf. Four years afterwards, he made it an article in his treaty of alliance with the City and Biſhop of Straſburg, that they ſhould aſſiſt him againſt his Wildbad enemies.

THE TANJORE MAHARAJA SERFOJI'S SARASWATI MAHAL

CHAPTER IV.

Other Revolutions in the Constitution of the Empire, during the Reigns of Charles IV. and his Successors, till the year 1414.

First appearance of several subsequent revolutions in the State—Decline of the Emperor's rights of supremacy, and decrease of his private domains—The necessity of electing an Emperor possessed of patrimonial territories—Residence of the Emperors in their own territories, instead of removing their court from place to place, as formerly—Commencement of a real elevation of rank—particularly of Prelates and Counts, who were made Princes—The houses and territories of Counts acquire the Ducal title—Effect of this elevation of rank, with respect to the votes at the Diet of the Empire, to the prejudice of the Counts—Mode of succession to the territories of the Princes, without respect to primogeniture—Important instances of the influence of the principles of the Roman law, to the prejudice of the succession of relations—Twofold provision against this, in the domestic settlements of the Princely Houses—Extraordinary increase of power of the House of Burgundy—Prague, the first University in the Venedic countries, and Germany in general.—Several others established afterwards at Vienna, Heidelberg, Leipsic, &c.—Extensive influence of these Universities, and their tendency to enlighten and improve the age.

EXCEPT what was contained in the Golden Bull, which in some measure was only converting customs into a written law, the constitution of the Empire in A. C. 1414.

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in other reſpects remained in the ſtate it was. A few circumſtances only, which explain themſelves in the ſequel of the hiſtory, already began to make their appearance.

From the time when Germany firſt received the diſtinct form of an Elective Empire, the Imperial States roſe not only in the part they took in all national buſineſs of importance, but in their quality as territorial Lords, or actual Sovereigns in their reſpective territories, nearly in the ſame proportion as the power of the Emperors declined. It might have been expected, therefore, that the Emperors would now take greater care of the remains of their rights of ſupremacy, and their revenues, to prevent their further decline: but the fact was quite the reverſe; for there ſeemed to be fewer difficulties to ſurmount, in procuring an act of favour from the Emperor than before, as there was not much likelihood of his ſurviving its injurious conſequences. Uncertain whether the Imperial dignity would remain in his Houſe, he was little concerned about the events of futurity. Thus it may in ſome meaſure be conceived, how Imperial grants of every kind began from this time to increaſe prodigiouſly. It was obvious now that every Emperor, who was only certain of the dignity for his own perſon, and not for his ſucceſſors, endeavoured to reap the advantages derived from the enjoyment of the honour, as much as poſſible for himſelf and for his family. If an opportunity offered, therefore, of converting whole domains, or profitable rights of ſupremacy, into

into money, by ſale or mortgage, it muſt have been more agreeable for an Emperor, who did not know whether his ſon would ſucceed him or not, to get the whole worth of them in this manner into his hands, at once, than be contented with receiving the profits of them for an uncertain number of years. This conſtantly occaſioned the mortgage of profitable domains and rights, or the alienation of them by ſome other means; ſo that at laſt, numerous and productive as they had been before, in the fourteenth century, there were ſcarcely any more remaining.

This ſoon produced an effect which has continued to the preſent day, and conſtantly become of more eſſential conſequence. Inſtead of an Emperor, as before, having more than a ſufficiency for his ſupport from his own domains, and other revenues; and if he was Duke before, reſigning his Dutchy, as was uſual, upon his acceſſion to the throne; ſuch were the circumſtances now, that an Emperor could not well be elected, unleſs he had a patrimonial territory of his own, to ſupply the expences which the Imperial dignity could no longer afford for its own ſupport.

It was very natural, therefore, for the reſidence of the Emperor's court to ceaſe removing from place to place, as he was now no longer in poſſeſſion of the domains with which all Germany formerly abounded. It might be obſerved, even in the time of Lewis of Bavaria, that he generally kept his court

at

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at Munich; and ſtill more in the reign of Charles IV, that Prague might be conſidered as his proper reſidence: and ſince that, it has been leſs frequent for the Emperors to leave their reſidence, which was generally in their own territories, to attend either a Diet, or the army of the Empire. It was very natural, likewiſe, in ſuch circumſtances, for an Emperor to have a greater attachment to his own hereditary dominions, than to the government of the Germanic Empire, nearly the whole of which was already divided into ſeparate States, of which he had only the honour of being the Supreme Head. Who, therefore, would blame Charles IV. for confining his attention to his kingdom of Bohemia? How could an Emperor be prevented from endeavouring to promote, by means of the Imperial dignity, the advantage of his own family, and his private territories, by making a war, for inſtance, in which his own houſe and family were only concerned, a war of the Empire? Or how could it be otherwiſe, when reſpect to the Emperor's dignity, and the political intereſt of his hereditary territories, came in competition with each other, than that the latter ſhould often obtain the preference? In other nations, and later times, ſuch caſes might occur; as in the inſtance of the King of Poland, who was at the ſame time Elector of Saxony: but here the caſe was merely accidental, as Poland may allow its King the revenues of the Crown, which may be a conſiderable ſaving to his own hereditary dominions. But it afterwards became continually more eſſential for the Germanic Empire

Empire to elect no other head, than a Prince who had ſufficient power of his own to ſupport his dignity.

Amother circumſtance which began now to be remarkable, and has ſince produced great revolutions, was the elevation of rank, which the Imperial power, as it was conſidered as the original fountain of all honour, conſtantly rendered more frequent. For a ſeries of years no elevation of rank had been cuſtomary, except the actual advancement to higher offices of honour, or the acquiſition of a country to which a higher title was annexed; as when a Count of Wettin became Margrave of Miſnia, and a Margrave of Auſtria Duke of Bavaria. It was only to be conſidered as a very extraordinary caſe, that Auſtria itſelf, when its poſſeſſor was obliged to reſign the Dutchy of Bavaria to the Guelphic family, which had been deprived of it by the proſcription of Henry the Proud, was converted from a Margraviate into a Dutchy. It was a very particular circumſtance, alſo, that the Houſes of Brunſwick and Heſſe were ſecured in the continuation of their titles, of Duke, and Landgrave, only by annexing them to other countries. The caſe was very different, likewiſe, when the Emperor made any of the Venedic Princes Dukes, that they might by that means be rendered capable of enjoying the natural rights of a Prince of the Empire; as, in this manner, Pomerania obtained the Ducal dignity in

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in the reign of Frederick I. and Mecklenburg, 1349, in the reign of Charles IV. The elevation of rank implied now a very different idea, as granting the dignity of a Prince was conferring a higher degree of nobility.

With respect to rank, Dukes and Counts were not distinguished from each other. A Duke, without prejudice to his rank, might marry a Countess, or give his daughter in marriage to a Count; but the precedency which Dukes, as well as Counts Palatine and Margraves, were allowed at the Diet of the Empire over those who were merely Imperial Counts, in the same manner as Archbishops and Bishops over Abbots and other Imperial Prelates, had first occasioned the general title of Prince, to point out the precedency which Dukes and Bishops had in common with each other, with respect to their rank over Counts and Prelates. It might certainly happen that a Count of Wettin, for instance, when the Emperor made him Margrave of Misnia, was at the same time indebted to him for the Princely dignity; but it was not in the same manner in the Emperor's power to raise an Abbot to the dignity of a Prince, by making him a Bishop. Yet several Abbies, as Fulda in particular, owing to the extent of their territories, and other advantages, were almost originally considered as Princely Abbies (*a*). This was perhaps

(*a*) In a diploma of the Emperor Conrad II, Fulda was already called *Principalis Abbatia*.—BROWER, *Antiquit. Fuldens.* Lib. iii. cap. 17.

perhaps the first reason why several other Abbots endeavoured to procure the Princely dignity by a grant from the Emperor (*a*). These were afterwards called, GEFÜRSTETE PRÄLATEN (*b*), Prelates invested with the dignity of Princes. But if Prelates could in this manner be made Princes by the Emperor, why could not Counts be made Princes likewise? Thus soon afterwards, the Counts of Flanders (*c*), Henneberg (*d*), Nassau (*e*), &c. were first

(*a*) In a diploma of the Emperor Rudolphus of Hapsburg, of the year 1274, in HEMGOTT. *Origin. Habsburg*, we find, "Abbatem Monasterii Heremitarum *in Principum* S. R. I. *consortium* adsciscimus." In another diploma of the same Rudolphus, of the year 1290, speaking of the Abbots of Murbach and Lüder, we find, "Ipsum *tanquam* nostrum et Imperii *Principem*—"admittentes—regalia feuda *Principatus Abbatiæ*, quem obtinet," &c.—LÜNIG's Imperial Archives. Spicil. Eccles. Contin. p. 978.

(*b*) This expression, GEFURSTETE AEBTE, occurs in a diploma of the Emperor Sigismund.—LIMNÆI *Jus Publ.* Lib. II. cap. ix. n. 25.

(*c*) Meier, *Annal. Rer. Belgicar.* p. 91. "Eodem anno (1262) "Richardus Cæsar petente Margaretha (Comitissa *Flandriæ*) Guidonem filium ejus recepit in fidem, et *Principem* salutavit S. "*Imperii*."—GEBAUER's Life of Richard, p. 50. GEBHARDI's Genealogical History of the Imperial States, B. I. p. 220.

(*d*) In a diploma of the Emperor Henry VII, of 1310, speaking of HENNEBERG, it is said, "Conferimus eidem Bertholdo "ac suis heredibus *omnia jura Principum*—quod ipse comes et "liberi sui debeant *jure, et more aliorum Principum* nostrorum et "Imperii *coruscare*." MEIBOM, *Scriptor. Rer. Germ.* Tom. III. p. 208.

(*e*) In a diploma of the Emperor Charles IV. 1366, it is said of Nassau, "Illustres *Principes Comites*, et in Collegio Principum "Comitum,

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first made Princes. Both the Counts and Prelates, who were made Princes, acquired afterwards a common name, as they were diftinguifhed by the name of *Princely*, from the Electoral Princes and others, though in other refpects they belonged to the fame clafs (*a*).

This matter was foon carried further; for the Emperor Lewis of Bavaria raifed the Count of Gelderland to be Duke of Gelderland; and Charles IV. raifed the Counts of Luxenburg, Bar, Juliers, and Berg, to be Dukes of their refpective territories; upon which, in the following reign, feveral other fuch Ducal promotions took place, in families and countries where before there had been only Counts, as in Savoy, Cleves, Holftein, and Wurtenberg. By this elevation, the name of a Dutchy, which was formerly only common to whole nations, fuch as Bavaria, Swabia, Franconia, Saxony, and Lorraine, was now tranferred to mere counties and family refidences. If therefore two or three of the original Dutchies now no longer exifted in Swabia and Franconia, owing to the diforders which had happened in the country, a new way was opened for completing and increafing their number in future.

According

"Comitum, qui vulgari Teutonico GEFÜRSTETE GRAFEN "dicuntur, computemini."—LÜNIG's Imperial Archives, Part. Spec. § 22. p. 458.

(*a*) ROBERT, Diff. *de ftatu eorum, qui fecundum leges Imperii dicuntur* FÜRSTENMÄSSIGE. Marburg, 1785.

According to the conſtitution of the Diet, at that time, the ſuffrages were not collected with ſo much exactneſs as at preſent. It cannot at leaſt be determined with certainty, what difference there was between the ſuffrages of Dukes and Counts: yet it is probable, that even at that time ſeveral Counts together, out of one country, were ſcarcely ſufficient to preſerve the counterpoiſe againſt one of the original Dukes; as, for inſtance, all the Counts of Swabia, againſt the Duke of Swabia, &c. However this might be, this elevation of rank, by which Counts were changed into Dukes, was permitted to have every effect which ſuch a change could poſſibly produce. They were not only placed upon an equality in point of rank with the ancient Dukes, and raiſed above all the Counts; but in the manner likewiſe of delivering their votes at the Diet, receiving their inveſtiture from the Emperor, and in all writings of chancery, as well as in all other matters of ceremony, they were without ſcruple conſidered on an equality with them.

The circumſtance of ſo many of the moſt conſiderable Houſes, which before had only enjoyed the title of Counts, quitting their former rank, and becoming Dukes, muſt certainly have been attended with very prejudicial conſequences to thoſe who continued in the rank of Counts; eſpecially as it happened likewiſe, that many of the Counts families became extinct, and their territories did not devolve to other Counts, but very frequently to Princes. Perhaps they reverted to them

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them as Lords paramount, or by their having married the daughters of Counts, who were heireſſes; or deſcended from Counts on their mothers ſide; or elſe the Princes might claim the reverſion by particular deeds of ſettlement. Owing to theſe circumſtances, the diſtinction between the Princes and Counts in Germany became continually more remarkable. The number of Counts and Lords who attended a Diet of the Empire, formerly eaſily exceeded the number of the Princes, and, according to the extent of their territories, formed at leaſt a certain equilibrium; but the ſcale of the Counts began evidently now to ſink. The Counts thought afterwards they might be able to afford themſelves mutual aſſiſtance by uniting; an idea which was ſuggeſted to them perhaps by the union of the Electors; but their caſe was too difficult to remedy. Their union, on the contrary, occaſioned it to be at laſt a ſettled matter for the votes of ſeveral Counts who were thus united, to be reckoned at the Diet only as one; inſtead of which, the vote of every Prince was delivered perſonally. As ſoon as this diſtinction between the collective votes of the Counts, and the perſonal votes of the Princes, was perfectly adjuſted, it became a matter of ſtill greater importance, when the Emperor's power of conferring a higher rank was capable of granting a Count, inſtead of the former part which he took in the collective vote in quality of Count, the perſonal vote of a Duke. On this account meaſures were afterwards adopted for confining this Imperial prerogative to narrower limits.

With

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With reſpect to the rank of Princes, there was another ſingular circumſtance, that if a Duke had ſeveral ſons, one of them was not made a Duke again, another a Count, and a third a Baron, as was cuſtomary before; but it was now univerſally introduced, that all titles of Duke, Margrave, Count Palatine, &c. as well as the title of Count, ſhould deſcend from every father to all his ſons. This tended in ſome reſpects to leſſen the weight of the Princes; as a Principality which at one time had only one poſſeſſor, after his death often became the property of ſeveral ſons, and afterwards of different branches ſpread into various families. In that caſe, one advantage they derived was, that when they all attended an Imperial Diet, the ſuffrages were collected according to the number of perſons; but as attending a Diet in ſo great a number, was then ſo much the more expenſive, it ſeldom happened. The weight of every Prince, who had now his ſhare of territory, in proportion to the number of his brothers or relations, was conſiderably leſſened, where this was not remedied in ſome other manner. In general, ſome help was afforded by ſeveral of the brothers in a large family chooſing an eccleſiaſtical life: they were provided for, therefore, by rich benefices and biſhopricks, or in the different orders of knighthood. Some likewiſe might provide for themſelves, by entering into the ſervice of the principal Courts; or elſe by continuing in a ſtate of celibacy, and by that means

 preventing

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preventing a number of the widows and children of Princes from being a burden on their families. The right of primogeniture, excepting where there were particular ordinances in the Golden Bull concerning the Electors, was as yet by no means general. They did not, however, on this account, proceed to a formal partition of a whole country, but, where it was practicable, had recourse to a joint possession of the government, or else a reciprocal succession in a certain number of years; an institution which was usually called a MUTSCHIERUNG, or alternation.

The practice of the Roman law, which became more prevalent now than ever, proved the greatest obstruction to the advancement of the Princely Houses; as the principles of inalienation of inherited estates, and the preference of the male line to the female, which that law was wholly unacquainted with, and which were the grand support of the solid splendour of the principal Germanic Houses, were evidently considerably weakened. The most striking examples were, the Mark Brandenburg, which in less than fifty years came by free disposal from the House of Bavaria to the House of Luxemburg, and from thence to the House of Hohenzollern (*a*), and the

(*a*) In the year 1373, Charles IV. got the Margraviate of Brandenburg out of the House of Bavaria, by purchasing it himself from Otho, who was then in possession of it. In the year 1415, Charles's son Sigismund transferred it again to Frederick I. Burgrave of Nurenburg, of the House of Hohenzollern, the ancestor of the present flourishing House of Brandenburg.

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the Dutchies of Luneburg (*a*), and Lorraine (*b*), were very nearly devolving, by the means of daughters, into other Houſes; whilſt nearer male relations were entirely ſet aſide.

Such examples as theſe might certainly have been a conſiderable inducement to the principal Houſes of Germany, to enter into a cloſer connection, by means of domeſtic ſettlements, hereditary unions, and pacts of confraternity, in order to ſecure the ſucceſſion of their territories with greater certainty to their poſterity, and prevent the daughters from having any claim, during the life of any of the male part of the family. The more frequently theſe connections were formed, with the reſervation of a future reciprocal inheritance, the leſs uſual were the former perpetual partitions, or TODTHEILUNGEN. It may now at leaſt be conſidered as a ſettled point,

that

(*a*) When Duke William of Luneburg died in 1369, and was the laſt of his line, his daughter's ſon Albert of Saxony diſputed the ſucceſſion with the relations of the Houſe of Brunſwick. Charles IV. declared in his favour, and he got part of the country in poſſeſſion; but an engagement at Winſen on the Aller, in the year 1388, decided in favour of the relations of the Houſe of Brunſwick.

(*b*) On the deceaſe of Charles the Bald, Duke of Lorraine, in 1430, his ſon-in-law Renat of Anjou diſputed the ſucceſſion with his brother's ſon Anthony. In this caſe, likewiſe, the Council of Baſil, and even the Emperor Sigiſmund, declared in favour of Renat. A match between Anthony's ſon Frederick, and Jolantha the daughter of Renat, in 1444, firſt occaſioned the Dutchy of Lorraine to revert to the ancient male race, through the iſſue of this marriage.

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that the partition which was made, for inſtance, in the Houſe of Bavaria, between the Palatinate and Bavarian lines; and in the latter, likewiſe, between Upper and Lower Bavaria, as well as between the lines of Ingolſtadt, Landſhut, and Munich, and the partitions of ſeveral lines in other Princely Houſes; were not deſigned to be perpetual.

One Houſe, and the only one of its kind, which at this time began to riſe above all the other Princely Houſes both of Germany and France, was that of Burgundy. The founder of it, Philip the Bald, on the death of King John of France, in 1364, as his younger ſon, procured the Dutchy of Burgundy, which properly belonged to France, to be again ſeparated from that crown; as the line of Capet, which formerly poſſeſſed it, became extinct in the year 1361. By his marriage with Margaret Counteſs of Flanders, in 1369, he added the County of Burgundy to his Houſe, together with Flanders, Artois, Mechlin, Antwerp, Nevers, and Rethel. To theſe places his grandſon Philip, ſurnamed the Kind, added Namur in 1428, Brabant and Limburg in 1430, Holland, Zealand, Hainault and Frieſland, in 1433, and Luxemburg in 1444; and his ſon Charles the Bald, in 1473, added Gelderland and Zutphen. Theſe Netherland Provinces, and the County of Burgundy, unqueſtionably belonged to the Germanic Empire; but the Houſe of Burgundy paid no regard to its ſupremacy. This matter came into debate, at a Diet of the Empire, held at Frankfort

fort in 1435, "concerning the meafures to be adopted "refpecting the Duke of Burgundy, who was in "poffeffion of a variety of countries, belonging "to the Empire." A declaration of war, likewife, was made againft Philip the Kind, of Burgundy, by the Emperor Sigifmund; but without effect. The affair was referved for the production of much greater revolutions afterwards.

Charles IV. did not a little contribute to the reputation, which I have already repeatedly mentioned, of the Roman law, which was now in general practice, by founding, amongft other inftitutions, a Univerfity at Prague, the firft of its kind in the Venedic lands, and indeed in Germany. Before this, there were only the Univerfities of Oxford, Bologna, and Paris, in Europe*. Charles fixed upon the latter of thefe as his model; and according to the cuftom which then prevailed, of dividing the Univerfities into nations, divided the Univerfity of Prague into the four nations of Bohemia, Bavaria, Saxony, and Poland (*a*). The ftipends, as well as the votes at the election of the Rector, and other

* Of thefe, Bologna was the oldeft, founded in 423; Paris was founded in 792, and Oxford in 886.

(*a*) In the Bohemian nation were ftill reckoned Moravia and Hungary; in the Bavarian, Auftria, Swabia, Franconia, and the countries on the Rhine; in the Saxon, Upper and Lower Saxony, Denmark, and Sweden; in the Poland, Silefia, Lithuania, and Ruffia.—Pelzel's Hiftory of the Bohemians, 3d Edit. Prague, 1782, p. 244.

affairs of the Univerſity, were regulated according to this diviſion. Charles made a point of providing the four faculties * with men of abilities, whom he invited to Prague, partly from Paris, and partly out of Italy. He ſucceeded ſo well in bringing the Univerſity into repute, that the number of ſtudents ſoon amounted to ſeveral thouſands. His ſucceſſor Wencelaus, likewiſe, honoured the Univerſity with his protection; but he favoured a new inſtitution, which gave the Univerſity a ſhock, from which it never perfectly recovered. At the election of a new Rector, as the Bohemians were always out-voted by the three other nations, the votes of the Bohemian graduates were ordered to be of more value in future than the others. This occaſioned almoſt all the Germans, many thouſands in number, in a ſhort time to leave Prague, to the irrecoverable injury of the new Univerſity.

The advantages which Charles procured for his reſidential town, by founding a Univerſity there, had in the mean time induced many of the Germanic Princes to follow his example. Duke Albert III, of Auſtria, founded one in the year 1365 at Vienna; Rupert I, Elector Palatine, founded another in 1386 at Heidelberg; and Frederick, Margrave of Miſnia, embraced the opportunity, afforded by the accident in 1409 at Prague, of founding a Univer-ſity

* In the Univerſities of Germany, the profeſſors are divided into the four faculties, as they are called, or claſſes, of divinity, law, phyſic, and philoſophy.

ſity at Leipſic. For all theſe literary inſtitutions, it was at that time only thought neceſſary to procure a grant from the Pope, by which the Biſhop, in whoſe dioceſs the Univerſity was ſituated, reſerved to himſelf the dignity of Chancellor, with the juriſdiction over ſuch eccleſiaſtics as belonged to the Univerſity, and the inſpection over academical honours. Every thing elſe was ſettled by territorial privileges. The Univerſity of Leipſic was the firſt inſtance of a confirmation being granted by the Emperor as well as by the Pope. In Univerſities which were of later date, no privileges occur, except from the Emperor; as at Greifswalde on the 16th of October 1456, and Marburg on the 16th of July 1541. The number of the Univerſities in Germany, in general, ſoon increaſed conſiderably (*a*).

All theſe Univerſities, both in Germany and other countries, in ſeveral reſpects ſoon produced certain conſequences, which could only be expected from the union of their ſtrength and intereſt. A narrowneſs of ſentiment, it is true, was generally prevalent; owing to a want of claſſical and hiſtorical knowledge, and the ſtudy of ſound philoſophy. The Clergy occupied many of the Profeſſorſhips, moſt of whom were perſons

(*a*) As in 1388 at Cologne, 1403 at Würtzburg, 1409 at Leipſic, 1415 at Roſtock, 1426 at Louvain, 1457 at Greifswalde, 1459 at Baſil, 1460 at Freyburg, 1472 at Ingolſtadt, 1477 at Tübingen, 1482 at Mentz, 1502 at Wittenberg, 1506 at Frankfort on the Oder, &c.—PFEFFINGER *ad Vitriar.* Tom. III. p. 233, ſq.

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persons belonging to religious orders, who, for various reasons, could not be expected to be much enlightened; yet notwithstanding this, in all the places where these Universities were founded, there were several whose department it was to devote themselves solely to knowledge and science, and whose situation gave them a different turn, and another mode of thinking, from those who were merely monks. This was attended with favourable consequences; men became more enlightened, and a greater freedom gradually diffused itself, in several places, in the manner of thinking, teaching, and writing.

CHAPTER

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CHAPTER V.

Revolutions in the Church during the Reſidence of the Popes at Avignon; and the Schiſm which that Circumſtance occaſioned in the Papal See.

Effect of the reſidence of the Popes at Avignon—Freſh uſurpation of the Popes in the diſpoſal of eccleſiaſtical preferment—Increaſe of money flowing into the Papal treaſury—Commotions occaſioned by Wickliffe's doctrines, and the ſchiſm of the two Popes, and two ſets of Cardinals—The latter ſupported by a ſimilar diſſenſion between Wencelaus and Rupert of the Palatinate—Fruitleſs convention of a Council at Piſa—The Imperial dignity conteſted again, till Sigiſmund ſurvived Jobſt of Moravia.

IF there was ever an object, on which an enlargement of ideas, and freedom of thinking, could have an effectual influence, and appear in all their worth, it was the ſtate of religion and the church in the fourteenth century. The circumſtance of the firſt Biſhop and viſible head of the Chriſtian Church living at a diſtance from his See, muſt have ſerved to juſtify many of the Archbiſhops and Biſhops in their deſertion of the places where their churches actually were, and making choice of other places of reſidence, as they found it convenient; or elſe travelling into foreign countries, and either leaving the diſtricts committed to their care, without inſpection,

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tion, or in the hands of hirelings. But the Pope himſelf, owing to his diſtance from Rome, muſt neceſſarily have loſt much of his revenue, and other advantages, which he might have enjoyed if he had been preſent at Rome, as Sovereign of the city, and the whole eccleſiaſtical territory; for as he was conſtantly abſent, it was impoſſible to prevent all ſorts of uſurpations, and the bad payment of his dues. To complete the deficiency which this might occaſion, the Popes at Avignon were fortunate enough in their invention of new and profitable ſources. Conſidering that the Iſidorian principles had now ſtood their ground againſt every objection and critical enquiry, and that ſyſtem upon ſyſtem had been built upon them by Gregory VII, Innocent III, and Boniface VIII, it was now an eaſy matter to continue to dictate laws to the world, which was once reduced to obedience to the Church and its viſible head, and add a freſh burden to the yoke which it had been already accuſtomed to bear.

Since the time of the Waldenſes, it had been uſual for the head of the Church, in order to prevent heretics from obtruding, like infected ſheep, into the fold of the Church, to undertake the diſpoſal of the vacant Archbiſhopricks and Biſhopricks to ſuch men whom he could depend upon: and what elſe but a laudable zeal, flowing from the ſame ſource, induced John XXII, in the year 1317, to ordain, that no one ſhould in future hold two benefices together; but where ſuch an

abuſe

abuſe prevailed, that every one poſſeſſing ſeveral benefices ſhould reſign all but one, and that the Holy Father would faithfully provide for the re-appointment of the ſpiritual offices which were thus vacated? What a paternal proviſion was it moreover of Benedict XII, in 1335, when he was graciouſly pleaſed to take the trouble upon himſelf of filling up the appointments to thoſe benefices, the incumbents of which deceaſed during their reſidence near the Papal See, that the churches, or foundations, which were in this manner rendered fatherleſs, might be exempted from care and trouble! How equitable was it of the Holy Father, to undertake afterwards the appointment of perſons in the room of thoſe whom he had depoſed, or tranſlated, or who died on their journey either to or from the Papal See, or in caſes where Cardinals, who were at the ſame time Archbiſhops or Biſhops, died, not only to diſpoſe of their Cardinalſhips, but provide their churches again with able and proper men? And when the unlimited and infallible head of the Church poſitively declared, that he thought fit, by virtue of his own ſupreme and abſolute power, to confer biſhopricks and benefices on this or the other perſon, for the welfare of the Church, who would have the preſumption to object to ſo laudable an act?

If any one was ſo fortunate as to procure a ſpiritual honour from God's Vicegerent, was it not alſo equitable to make ſome acknowledgement

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to his benefactor, at a time too when his former sources of support were somewhat diminished? It stands to reason, that the fees of chancery for executing writings were still continued: but was it not just that somewhat more should be done for their benefactor, as an immediate proof of gratitude? There were traces to be found, of a year's income having been given up, in ancient times, in similar cases, to him who had granted the future enjoyment of it without limitation. This was a sufficient precedent: a demand therefore was made of Annats*; an acknowledgement of the revenue of the first year, which was poured into the papal treasury. This the Holy Father was graciously pleased to approve of, and thought that he had a right to expect it from every grateful son. The pallium likewise, a mark of honour by which the Archbishops and favoured Bishops were distinguished, could not now be procured, without the payment of a considerable sum of money.

To this must be added the receipts from the clergy and the laity, not merely from a single nation,

* Annats, so called from the latin, *annus* a year, because their rate is after one year's purchase. They are the same with what have since been called in England *Primitiæ*, or First-fruits, which the Parliament, in the reign of Henry VIII, took from the Pope, and granted to the Crown. Queen Ann restored them again to the Church, by appropriating them to the augmentation of poor livings.—Chambers's Encyclop. Art. *Annates*.

tion, but from all the kingdoms and ſtates in Chriſtendom, from Germany, France, Spain, England, Italy, Poland, Denmark, Sweden, &c. for diſpenſations, indulgences, legal deciſions, and abſolutions, which, on more occaſions than one, were ſo eaſy to bring into general circulation. Hence we may in ſome meaſure conceive, when we hear or read of the Popes at Avignon, where they made no reduction of their uſual and extraordinary expences, amaſſing ſuch aſtoniſhing ſums of money, that John XXII, for inſtance, who died in 1334, left no leſs a ſum than eighteen millions of golden florins in ready money *, beſides a variety of valuable effects, to the amount of ſeven millions more (*a*). Where is the monarch who can produce ſuch a treaſure now, or boaſt of ſo many wealthy ſources? But how oppreſſive muſt this have ſoon appeared to every nation, from which, at a time when money was ſo ſcarce, ſuch ſums were continually drained, without any proſpect of return! It was not requiſite to have much reflection, to feel the weight of ſo grievous an oppreſſion. Little enlightened as thoſe times were, yet, if there was the leaſt freedom of thinking, it could not poſſibly be otherwiſe than that whole nations muſt have joined in one loud and general complaint.

Juſt

* A GOLDGULDEN, or florin, is a piece of gold, valued in Germany at two rix-dollars; ſo that this ſum, reckoning ſix dollars to the pound, amounts to ſix millions ſterling in Engliſh money.

(*a*) Schmidt's Hiſtory of Germany, Vol. II. p. 529.

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Just at this period John Wickliffe, a professor of an English university *, seemed ordained by Providence to penetrate deeper into the real foundation of all religion, and open the eyes of the world, to see the hierarchy and monkery in a different point of view from that in which they had been hitherto considered by the multitude. It happened likewise, that an attempt which Gregory XI. made in 1376, to return from Avignon to Rome, was, after his death, attended with the unexpected consequence, that though Pope Urban VI, who was elected in his place at Rome, continued there, another Pope, Clement VII, whom the same Cardinals had elected soon afterwards at Fondi, under the protection of the Crown of Naples, returned, conducted by them to Avignon. Urban however created a new College of Cardinals at Rome; so that both Rome and Avignon now had each its own Pope, and each

* John Wickliffe was born at Richmond, in the county of York, about the year 1324. He was first a commoner of Queen's College, Oxford, and afterwards a scholar of Merton. In the year 1365 he was constituted Warden of Canterbury College, where the celebrated Chaucer was under his tuition. He suffered great persecution from Pope Urban VI.; and was at last, though highly beloved, obliged to quit the university, by order of King Edward III, who threatened every one with expulsion that offered to receive him. He died on the 28th of December, 1384, at his living of Lutterworth, in Leicestershire, and was buried in the parish church. His writings against the Church of Rome, and particularly against the Mendicant Order of Friars, were numerous and severe. He rendered himself most famous by translating the Bible into English. Of this several editions have since been published, of which many copies are still extant.—Biographia Britannica, Art. *Wickliffe.*

each its College of Cardinals. The ſtrongeſt objections muſt have appeared againſt this, to every one who had the leaſt reflection, the removal of which could not be a matter of indifference; and yet there did not ſeem a poſſibility for this ſchiſm, as the conteſt which aroſe about the Pontificate was called, ever to be removed, as the different Powers of Europe were very far from being united concerning which of the two Popes they ſhould countenance, or, to uſe the language of thoſe times, to whom they ſhould pay obedience. Thus France and Naples, as well as Spain, and ſeveral of the Imperial States of Germany, were naturally diſpoſed to pay obedience to Clement VII. The Emperor, on the contrary, together with the greateſt part of the States of Germany and Italy, England, Hungary, Portugal, and the kingdoms of the North, were the partiſans of Urban VI.

Wickliffe indeed gave the wholeſome advice, that when Urban deceaſed, no Pope ſhould be elected in his place, as he thought that every nation was capable of taking the management of eccleſiaſtical affairs upon itſelf, and that there was no neceſſity for the Chriſtian Church to have any univerſal viſible head. But for this doctrine the world did not appear ſufficiently matured; the Cardinals at leaſt were very averſe to it. When a Pope died therefore, either at Rome, or at Avignon, the College of Cardinals did not hesitate

hesitate to elect another in his room: so that upon the death of Urban VI, in 1389, he was succeeded at Rome by Boniface IX; Gregory XII. succeded Boniface in 1404; and at Avignon, Benedict XIII. succeeded on the death of Clement VII. in 1394.

At last several temporal powers resolved to renounce the obedience they had hitherto observed to both the Popes, that they might be at liberty to proceed unanimously to a new election. Benedict was thus renounced in July 1398; but Boniface IX. contrived to prevail upon the Elector of Mentz, and some of his electoral fraternity, to renounce their obedience to the Emperor Wencelaus, and proclaim Rupert, the Elector Palatine, Emperor in his stead. Both the visible heads of the Christian world therefore, the temporal as well as the spiritual, were divided by a schism, and seemed to derive a mutual aid from each other.

Nothing remained now but having recourse to a single method, which had been no longer in use for several centuries, and which was looked upon by many as the only one, by which the matter could be remedied, and by which perhaps a plan might be suggested for silencing the complaints which began to be so universal and so loud, concerning the abuses of the Papal See, and the Church in general. The method proposed was, that a general Council should

be

be held, for which, in the present situation of affairs, it was thought that a number of Cardinals, of both parties united, might make the necessary arrangements. CHAP. V.

A Council fortunately assembled in the year 1409 at Pisa. Both the Popes, Gregory XII. and Benedict XIII, were deposed; Alexander V. was elected on the 26th of June; and at his death, in April 1410, John XXIII. succeeded. But neither of the two former Popes could be prevailed upon to submit to the Council. Although they were under the necessity of quitting their ancient residences, they still met with support in other places. Gregory took refuge in the court of Naples, at Rimini, and Benedict in the court of Spain, at Perpignan. The other consultations, respecting a reformation in the Church, and the removal of the complaints which prevailed against the Pontificate itself, were either prematurely dissolved, or referred to a future Council.

The dissension which arose during this period likewise, between Wencelaus and Rupert, respecting the Imperial dignity, was fortunately put an end to by the death of the latter, May 19th, 1410, when Wencelaus at last consented to the succession of his brother Sigismund to the Imperial throne. He met with some opposition at first from his cousin Jobst, of Moravia, who was chosen

by ſome of the Electors, October 1ſt; but upon the death of that Prince he was re-elected, and enjoyed the government alone for many years; during which, many events occurred which merit a particular diſcuſſion.

CHAPTER

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CHAPTER VI.

Council of Conftance, and other Events in Connexion with it.

Regulations concerning the mode of the deliberations at the Council of Conftance—The diffenfion which had fubfifted amongft the Popes removed—Election of a new Pope, and his concordats with feveral nations, particularly with Germany—The hopes of any reformation in the Church fruftrated—Dreadful fate of John Hufs—New difpute concerning the reftoration of the cup in the adminiftration of the Lord's fupper—Commencement and progrefs of the war of the Huffites—Amicable negociation with the new Council at Bafil—Other revolutions produced by the war of the Huffites—New matricula of the Empire—Cuftody of the Imperial infignia at Nurenberg.

SIGISMUND made it his particular bufinefs A. C. 1414. to procure a new and general Council to be convoked at Conftance. The four nations of Germany, Italy, France, and England, took part in it immediately; and the deliberations were fo regulated in confequence of a previous refolution, that the majority of fingle votes, by which the number of Italian Prelates would have preponderated, was not reckoned; but it was agreed, that the majority of votes fhould be reckoned according to the conclufions of the different nations, which, for that reafon, held their refpective confultations under the direction of

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a particular president *. This regulation had no small influence in passing the decree which afterwards obliged all the three Popes, who then assumed authority, to resign their titles, and remove the schism which had been so great a scandal to the Church.

Gregory XII. peaceably submitted; but John XXIII. attempted to save himself by privately removing from Constance, a measure which he thought perhaps would dissolve the Council; but he was brought back again, and after a formal process, in which, besides general charges, no less than fifty-four private complaints were made against him, he was deposed from the Pontiff's chair, and committed to prison. Sigismund himself undertook a journey from Constance to Spain,

* At this Council, where Sigismund appeared in all his glory, a prodigious number of Cardinals, Prelates, and Doctors, a hundred and eight Counts, two hundred Barons, and twenty-seven Ambassadors from the several Courts of Europe, were present, who all vied with each other in luxury and magnificence. There were also five hundred players on instruments, called in those times Minstrels, and seven hundred and eighteen courtesans, who were protected by the magistracy.

History of Modern Europe, Vol. I. p. 472.

Pfeffel says, eighteen thousand Prelates, and more than sixteen thousand Princes and Lords. The Council was opened November 15th, at midnight, by a solemn mass, at which Sigismund himself assisted in the habit of a Deacon, and read the gospel according to the usual custom.

Pfeffel, Hist. d'Allemagne, Part I. p. 426.

The particular transactions of this famous Council are related at large in Bower's History of the Popes, and several other works.

Spain, and prevailed upon the Spaniards to join the Council as the fifth nation. Benedict XIII. could not by any means be moved to yield to the decrees which were passed at Constance. Even after his death, in the year 1424, the Cardinals who were zealous in his cause, elected Clement VIII. Pope in his stead. This Pontiff however at last submitted June 26th, 1429; and thus the remains of the dissension which had hitherto subsisted in the Papacy, were finally destroyed.

This would have been the proper time, after John XXIII. was legally deposed, to have begun a reformation in the Church, and taken the general complaints of the different nations into consideration before a new Pope was elected; but it was the prevailing idea, that the Church could not properly form any resolution without its head. Martin V. therefore was elected November 14th, 1417. This Pontiff deferred the consideration of the above important objects to a future Council, which he promised to convoke before five years were elapsed. In the mean time however, he endeavoured to enter into a particular treaty, or CONCORDAT, with each particular nation, which was very far from removing the complaints that had been made, or even tending to promote the final abolition of those abuses which were so universally acknowledged. In the concordat which Martin made with Germany, there was no idea of removing the grand complaints respecting the disposal of benefices, and the various demands

A.C. 1417.

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demands of money; much leſs of any remedy for the viſible decline, which was ſo generally complained of, in eccleſiaſtical diſcipline. The annats were only to be reduced to a certain fixed tax, as they were regiſtered in the books of the papal treaſury. With reſpect to abſolutions, the Pope was only to prevent their being wantonly diſpoſed of, leſt they ſhould become too common, and ſink into diſrepute. A condition likewiſe was made, that the advantages which were granted to the Pope ſhould only be conſidered valid for the term of five years. But at Rome they ſoon found means of continuing the poſſeſſion of them. On the other hand, a variety of things which were to be performed at Rome in conſequence of this concordat, were never put in execution; as in the inſtance of one particular circumſtance, which was the condition, that the number of Cardinals ſhould not exceed twenty-four, and that a proportionable number of them ſhould be ſent by every nation, &c. (*a*).

Thus, after all the vaſt expectations which had been formed of a reformation in the Church, by means of the Council of Conſtance, not a ſtep further was advanced. On the contrary, an event occurred at Conſtance which totally fruſtrated the wiſhes of the people. Their eager hopes of being ſet at liberty from the oppreſſion of the papal yoke, were

(*a*) Collection of the Receſſes of the Empire. Frankfort, 1747. Vol. I. p. 112.

were totally destroyed; and the prospect of success, which they formerly entertained, was at a greater distance than ever.

The example of Wickliffe, a learned English academic, encouraged the zeal of John Huss, a professor of divinity in the University at Prague, to expose the relaxed state of ecclesiastical discipline, and the negligence of the clergy themselves, with uncommon freedom, in his lectures as well as in his writings. He had already been the cause of a change in the internal state of his own University, which procured him a considerable weight amongst the students; for the votes of the Bohemian nation had now no longer three votes to contest with, according to the ancient regulation; but they were esteemed of greater consequence than all the other votes, which were given by foreigners, in imitation of the University of Paris. But though his weight increased amongst the students, he was more exposed to the persecution of the Archbishop of Prague, and of all who were dissatisfied with his academical regulations.

Thus the doctrines and writings of Huss became one of the first objects of deliberation in the Council, and an unfortunate sacrifice to the power of the Hierarchy, which knew no other way of escaping such censures, than by having recourse to fire and the sword. Notwithstanding a safe conduct was granted by the Emperor to Huss, he was apprehended,

BOOK III. C. 1415.

hended, committed to prifon, and condemned to the flames, July 6, 1415, at Conftance—for being a heretic—and his whole herefy confifted in reprefenting the manners of the Clergy, particularly of the Pope, the Cardinals, the Archbifhops, Bifhops, Canons, and Monks, in their genuine colours. But who would have ventured at fuch a time as this, to mention fuch things as thefe aloud? Who could entertain a hopé, that any Council would attempt to remove fuch grievances? What then remained, but patiently to endure the yoke which could not be fhaken off, and which no one could touch with his finger, without hazarding his life?

An event happened at Prague, during Hufs's abfence, with which the affair in queftion had no fort of connexion. A certain Jacob de Miefs difcovered, that it was owing to a miftake of no long ftanding, that in the adminiftration of the Lord's fupper, the cup was denied to the laity. "He began immediately of his own accord, with all "the eagernefs with which a long oppreffion is ufually "revenged, to communicate the cup. Novelty, and "a univerfal fenfe of the truth, foon procured him "a confiderable number of adherents; and his party, "warned by the fate of Hufs, would not fuffer this "evident abufe in the church to be referred for de-"cifion to the Synod of Conftance (*a*)." The Council, however, rejected this deviation from a practice which had been once introduced, and which they

(*a*) Spittler's Ecclefiaftical Hiftory, p. 349.

they preferred to the exprefs words of the Founder of the facrament himfelf, who ordained that it fhould be adminiftered with bread and wine.

One word now followed another; and the Bohemians, many of whom examined deeper into the Scriptures, and confidered themfelves daily under lefs obligation to fubject their confciences to the judgment of an affembly of fallible men, would not wait for permiffion from Conftance, to perform their religious worfhip according to their own convictions. Wencelaus himfelf did not oppofe them. The Council of Conftance condemned twenty-four articles under the name of Huffian herefies, and on that account excommunicated four hundred Bohemians. The Cardinal Julian was obliged to go to Bohemia, to fee the fentence put in execution. This was foon the occafion of open hoftilities, which were ftill further increafed by the death of Wencelaus: this event happened Auguft 16, 1419, when hoftilities firft commenced, and even the throne of Bohemia was contefted by Sigifmund.

In the war of the Huffites, as it was called, which now commenced, Sigifmund undertook no lefs than fix campaigns. He was not only fupported by the Germanic Empire, but the Pope even ordered a crufade to be preached againft the heretics. But all oppofition was in vain: not a fingle campaign fucceeded. On the contrary, the Bohemians became dreadful to all their neighbours by feveral events

which

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which happened in their favour. Sigifmund was obliged at laft to have recourfe to an amicable negociation; but as the principal objects of this were religion, and the ecclefiaftical conftitution, and as it had been refolved at Conftance to hold another Council, he at laft procured a new one to be convoked at Bafil. By means of this, he fucceeded fo far in the accomplifhment of his defigns, that in 1433, he gained a part of the Bohemians over to his intereft, by entering into a certain compact with them, in which they were particularly allowed the ufe of the cup. Thefe were afterwards called the Calixtines, and continued diftinct from the other difciples of Hufs, who went by the name of the Taborites *. The latter, however, after an engagement in which they were defeated by the Calixtines, were obliged to yield. On the 5th of July, 1436, a general peace was concluded; by which Sigifmund, though but a fhort time before his deceafe, obtained the quiet poffeffion of Bohemia.

In the war of the Huffites, the ufe of powder and ball was firft brought into more general ufe than it was before. The grants made for that purpofe by the Diet, firft occafioned the regifter, which was afterwards called the Matricula of the Empire, to determine

* The Calixtines were fo called from the Latin word *Calix*, becaufe the laity partook of the wine; and the Taborites, from a mountain in the Circle of Bechin, called TABOR, where the difciples of Hufs affembled fometimes, forty thoufand at a time.—Schmidt.

determine the quota of men and money to be contributed each campaign by the States. The war of the Huſſites, likewiſe, was the cauſe of the Imperial ornaments, which were uſed at every election, and which every Emperor formerly kept in his own poſſeſſion, being carried in the year 1424, from the caſtle of Carlſtein in Bohemia, to Hungary; and their being afterwards, by a particular charter from the Emperor and the Pope, entruſted to the city of Nurenberg, to be conſtantly kept there. Since that time, the jewels, when they are required in any other place, muſt firſt be brought from Nurenberg *, in the ſame manner as ſeveral other articles, which are in the cuſtody of the convent of Saint Mary at Aix-la-Chapelle †, are brought from thence to the place where the coronation is celebrated.

* The Imperial ornaments in the cuſtody of the city of Nurenberg, are, the diadem of Charlemagne, which is of pure gold, weighing fourteen pounds, and is covered with precious ſtones; his mantle, embroidered with large pearl; the golden apple, or globe; his ſword; his golden ſceptre; the Imperial cloak, embroidered with eagles, and bordered with emeralds, diamonds, &c. his embroidered gloves and buſkins, covered with plates of gold.

† The articles at Aix-la-Chapelle are, Charlemagne's ſword, ſhoulder-belt, and the goſpel in golden letters.

CHAPTER

CHAPTER VII.

Revolutions in the Church, and in the Empire, during the Reigns of Albert II. and Frederick III.

1437—1493.

Gleam of hope in the reign of Albert II.—but fruſtrated in the ſucceeding reign of Frederick III.—Freſh diviſion in the Church, by Eugenius IV. being oppoſed by the Council of Baſil to Felix V.—Albert II. declares himſelf neutral; his temporary admiſſion of the moſt uſeful decrees of the Council of Baſil—The reſiſtance of Frederick III. till the Concordat of Aſchaffenburg—The effects of this Concordat ſtill oppreſſive to the Catholic part of Germany—Fruitleſs endeavours to aboliſh the cuſtom of private wars, and introduce a ſubſtantial ſyſtem of juſtice—Archducal title of the Houſe of Auſtria—Important acquiſition to that Houſe, of the Burgundian Netherlands—Maximilian I. elected King of the Romans—Origin and conſtitution of the Swabian league—Invention and propagation of the art of printing—its influence on the ſtate of literature—Territorial prerogatives of the States with reſpect to the preſs—Fruitleſs attempt to procure the appointment of a general ſuperintendant of the preſs in the name of the Emperor—Change in the conſtitution of the Diet.

DURING the reign of Sigiſmund, the tranquillity of the Empire was ſtill diſturbed by the diſorders occaſioned by private wars; and no meaſures were adopted to remove the complaints made concerning abuſes

abuſes in the Church. A gleam of hope appeared in the ſhort reign of his ſucceſſor Albert II.; but it apppeared only to make the diſappointment, during the long reign of Frederick II, more ſeverely felt. CHAP. VII.

The Council of Baſil appeared to be very earneſt in promoting a reform in the Church, both with reſpect to its head and members; and ſeveral decrees were actually paſſed on ſubjects of the firſt importance. The eſtabliſhment of the Papal Court, the number of Cardinals, and the exerciſe of the ſupreme juriſdiction, were to undergo conſiderable reſtrictions. Annats, the money paid for palliums, proviſions *, and many other things of the like nature, were to be aboliſhed. But a new diſſenſion unfortunately aroſe between the Council of Baſil and Pope Eugenius IV. The Pope inſiſted upon removing the Council to Ferrara, where he actually opened a new one. The Council of Baſil, on the contrary, demanded an anſwer to their ſummons from Eugenius, and threatened to depoſe him if he refuſed to appear. Eugenius did not obey the ſummons: the Council therefore actually depoſed him, and elected Amadeus, Duke of Savoy, who aſſumed the name of Felix V. Thus a new ſchiſm aroſe, not only between the two Popes, but between two different Councils; and anathemas were mutually pronounced againſt each other.

In

* Provision (in canon law) is the title or inſtrument, by virtue of which an incumbent holds, or is provided with a benefice, biſhoprick, &c.

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In this ſituation of things, Albert acted the moſt prudent part: he declared himſelf, as well as the Germanic Empire, neutral with reſpect to the diviſion of the Popes and Councils. In the mean time, however, he publicly adopted the decrees which had been paſſed at Baſil before the conteſt began, by a DEED OF ACCEPTANCE (*a*), March 26, 1439. The Electors, after his death, likewiſe firmly perſiſted in the ſame meaſures. They declared, even in the year 1440, their unanimous reſolution to inſiſt upon it, that the Pope who ſhould finally be elected, ſhould promiſe to diſcontinue the former uſurpations, ſuch as the diſpoſing of vacant benefices, demanding money for confirmation, proviſion, the pallium, &c. and that he ſhould pay more reſpect to Germany than to any other nation.

Frederick III. was of very different ſentiments. Diſſatisfied with the uncertainty reſpecting the real Pope, from whom he was to receive the crown, and who might gratify his wiſh by performing the marriage ceremony for him immediately, he privately acknowledged Eugenius. This event inſpired his Holineſs with ſuch a degree of confidence, that he depoſed the Electors of Treves and Cologne, whom he accuſed of being his chief adverſaries, and appointed others in their room. This act produced ſo

(*a*) This inſtrument (ACCEPTATIONSURKUNDE) was firſt printed at Mentz in 1763, with the title of *Concordata Nationis Germanicæ Integra*, p. 21, 61. Edit. II. Frf. & Lipſ. 1771. p. 38, 134.

so steadfast a union of the Electors, that they obliged the Pope, on the 21st of March, 1446 (*a*), not only to desist from his former purposes, but to give his consent to a Concordat of a very different nature, which was proposed in September at Frankfort, and promulgated in four different Bulls on the 5th and 7th of February, 1447. These four Bulls, and the deed of acceptance above mentioned, constitute what is usually denominated the FÜRSTENCONCORDATE (*Concordata Principum*) (*b*). But when the business was on the point of being finally settled, the Emperor added a few articles in favour of the Pope, and granted the Legate of Pope Nicholas V. such immoderate advantages, on the 19th of March, 1448, at Aschaffenburg, notwithstanding the States protested against them, that the Catholic part of Germany has laboured under the oppression of the Aschaffenburg Concordat to the present day. The Concordat of the Princes, on the contrary, was very little, or rather not at all enforced (*c*), although it was not rendered less obligatory at Aschaffenburg, but expressly confirmed (*d*).

 Thus

(*a*) GUDENUS, *Cod. Diplom.* Tom. IV. p. 290, 300.

(*b*) Collection of the Recesses of the Empire, Vol. I. p. 177. Concordata Nat. Germ. Integra, p. 61. (Edit. 2. p. 135, 147.)

(*c*) Since the time of Charles V. every Emperor is bound, by the capitulation at his election, to exert himself to the utmost of his power with the Pope, to see that the *Concordata Principum* and other treaties are duly observed.—Capitulation. 1519. Art. 14. § 1.

(*d*) Concord. N. G. § 8. in Schmauss Corp. Jur. Publ. p. 51.

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Thus the principal grievances, ſuch as the annats, charges for the pallium, and other exactions, not only remained, but the ſame pretences were ſtill made uſe of at Rome as ever, for appointing the Archbiſhops and Biſhops, and the diſpoſal of other benefices was left to the Pope, if the vacancy happened in the alternate months of January, March, May, &c. The introduction of this privilege was oppoſed in ſome foundations from the beginning; and ſeveral Archbiſhops and Biſhops were allowed the right of preſentation in the Papal months, by particular indulgence. The ſame right was granted likewiſe to the Houſe of Bavaria. The three ſpiritual Electors reſerved the perpetual enjoyment of ſuch indulgences for themſelves, when the Concordat was drawn up at Aſchaffenburg; but they were limited afterwards to five years; and as the renewal of them was frequently neglected for a conſiderable time, the vacant benefices were diſpoſed of at Rome. A particular clauſe, which was inſerted in the indulgences, required thoſe who were preſented to benefices by Archbiſhops, to make their appearance at Rome within ſix months after their preſentation, and pay a ſum of money for induction. The three ſpiritual Electors complain of this grievance even now (*a*). The Archbiſhop of Salzburg was in a ſimilar predicament, but declared in 1764, that an indulgence was by no means neceſſary (*b*). This Archbiſhoprick has the particular privilege, likewiſe, of preſenting four

(*a*) Le Bret's Magazine, Vol. VIII. p. 4, 5.
(*b*) Account of Juvavia, p. 280, 283.

four ſuffragan Biſhops, without any capitular election, to the Sees of Gurk, Chiemſee, Seckau, and Lavant; except that the incumbent of the latter is alternately preſented by the Houſe of Auſtria (*a*).

Albert had laid an excellent plan for the improvement of the internal political ſtate of Germany, which would have totally aboliſhed the right of private war, and eſtabliſhed a ſubſtantial adminiſtration of juſtice; for the ſupport of which, Germany was to be divided into ſix Circles. A variety of plans were propoſed likewiſe on this ſubject to Frederick III. One of them, which came into debate at the firſt Diet which he held at Mentz in 1441, was to eſtabliſh one Imperial chamber, four Aulic courts, ſixteen provincial courts, and ſixty-four free tribunals, for all Germany, and to aboliſh the practice of the Roman law entirely. But during the whole reign of Frederick, which laſted fifty-three years, he was not able to accompliſh one of theſe deſigns. The horrors of private war, on the contrary, grew more dreadful than ever; and all Germany was involved in a ſcene of terrible confuſion, which it had never before experienced. Not only the lords of territories, who had ſubjects at controul, took the field againſt each other, and ſometimes againſt cities, or entered the liſts of combat with the nobles of the country; but every ſubject, and every aſſociation of tradeſmen, thought themſelves entitled to engage

 in

(*a*) Account of Juvavia, p. 246, 278.

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in ſuch wars, by ſending regular declarations of war, in a manner which in the preſent times ſeems ſcarcely credible (*a*) : ſo little is the account of a contemporary writer exaggerated, when he deſcribes the whole of Germany as a den of murderers (*b*).

Frederick was of conſiderable ſervice to his family, by conferring upon it, as Emperor, the dignity of Archduke, which has continued ever ſince peculiar to the Houſe of Auſtria. Although he did not accompliſh his aim, that the Ducal Houſe of Bavaria, which had the firſt ſeat upon the ſecular bench, ſhould reſign it to the Archducal Houſe of Auſtria; yet that circumſtance occaſioned that the miniſter who delivers the Auſtrian vote, as he could not obtain the firſt ſeat on the ſecular bench, went over to the ſpiritual one; and ſtill occupies ſometimes the firſt, and ſometimes the ſecond place, alternately with Salzburg.

Frederick, beſides this, lived to ſee a ſplendid proſpect for his family, by eſpouſing his ſon Maximilian

(*a*) Thus we meet with a declaration of hoſtilities from the baker and domeſtics of the Margrave of Baden, againſt the Imperial cities of Eſlingen, Reutlingen, and others, in the year 1450. In like manner again from the baker of the Count Palatine Lewis, againſt the cities of Augſburg, Ulm, and Rothweil, in 1462; and from a cook of Eppenſtein, with his ſcullions, dairy-maids, diſh-waſhers, &c. againſt Otho Count of Solms, in 1477.—Pütter's Elements, &c. p. 373.

(*b*) Pütter's Elements, &c. p. 374. Schmidt's Hiſtory of Germany, Vol. IV. p. 514.

milian to Mary, Dutchefs of Burgundy; by which he gained the expectation of bringing all the Netherland provinces into the poffeffion of his Houfe, though juft at that time the feries of wars commenced, in which the Houfe of Auftria was involved with France till the peace of Aix-la-Chapelle in 1748. CHAP. VII.

Maximilian was elected King of the Romans in the year 1486, with the hope that he would accomplifh what the nation could not obtain from the Emperor. But the plans for the inftitution of the Imperial chamber, and a general PUBLIC PEACE, which were propofed in that year by the States, were never put in execution. A public peace was renewed in 1486 for ten years; and Frederick III. when he recommended it to the States of the Empire, occafioned an affociation, which was fortunately eftablifhed in 1488, under the name of the Swabian League; though it was not merely compofed of Swabians, but of a confiderable number of other States, and proved for many years, till 1533, to be of the firft confequence in maintaining the internal peace of the Empire, as well as preferving the Emperor's authority. We may conceive what weight and power this affociation muft have had, from the circumftance of its keeping a ftanding army of upwards of a thoufand horfe, and between eight and nine thoufand infantry, for the prefervation of the public peace and fafety. Particular counfellors, as they were called, of the league, were

were invested with the inspection of the whole; and they had their own tribunal, which took cognizance of all causes in which the members of the league were interested.

A change of the most important nature was occasioned in this reign by the invention of Printing, as it was established with cast letters by Peter Schoeffer at Mentz, in 1459, after many attempts by Laurence Costar, at Haarlem *, in 1436, and John Gansefleish, and John Guttenberg, at Mentz. This invention was for some time treated as a secret art, known only at Mentz, till the year 1462, when that city was besieged, and many of the workmen, who were acquainted with the mystery, made their escape, and afterwards practised the art in many other places. Thus printing was not only established in

* The city of Haarlem disputes the honour of the invention of printing with Mentz and Strasburg, and, we have reason to think, with advantage. This discovery, so useful to the progress of letters, by the quickness of its operation, is attributed to Laurence Costar, a citizen of Haarlem. They relate a story of this immortal man, that as he was walking one day in the neighbouring wood, he engraved certain characters on the bark of a tree, which he afterwards impressed on paper. Astonished at the success of this experiment, he repeated it, and afterwards brought it to perfection. He invented the moveable letters in wood; Guttenberg and others cut them in metal at Mentz; and Schoeffer cast them in moulds at Strasburg. He who was the first discoverer, therefore, and made the first use of single and moveable characters, is certainly to be esteemed the inventor of typography.—Guide des Voyageurs en Hollande, à la Haye, 1781.

in foreign countries, at Rome, Paris, Naples, &c.(*a*) by Germans*, but by degrees likewise in several of the German towns.

By means of this invention, many thousand copies of a work could be made in a short time by a few hands, which before employed as many thousand, or so many thousand times as much time and labour; and thus a writing could be dispersed, in a short time, through a thousand hands; and there was no reason to apprehend that a book which was once printed, would ever be lost. On the contrary, it is almost a wonder that so many manuscripts, written so many years ago, were preserved so long. This must very naturally soon have had a considerable influence

 on

(*a*) As at Rome, in 1467, by Conrad Schweinheim, and Arnold Pannarz; at Venice, in 1469, by John de Speier; at Paris, in 1470, by Ulric Gering, and Michael Freyburgen; at Naples, in 1471, by Sixt. Reiffinger, &c.—Pütter's Elements of Germanic History, p. 378.

* In 1468 printing is supposed to have been carried into England from Haarlem, by W. Caxton, a mercer, who first practised it in Westminster Abbey.

John Fust, or Faustus, the father-in-law of Schoeffer, carried a parcel of his printed bibles to Paris, and offered them to sale as manuscripts; but the French, considering the number of the books, and their exact conformity to each other, even to a point, that the best book-writers could not come up to such exactness, concluded there was witchcraft, or black art, in the case; and by threatening to indict him as a magician, obliged him to discover the secret: from whence arose the vulgar story of the Conjuror, or Black Artist, Dr. Faustus.

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on the price of books. Every private man had it in his power now to purchaſe a large number for an inconſiderable ſum of money; whereas copies of a copious work were formerly exchanged for their worth in land; and it ſeldom happened that there was a moderate collection of books, except in the poſſeſſion of ſovereign princes, or wealthy convents.

It may be eaſily conceived how much this muſt have contributed to the increaſe of literary knowledge, and tended to enlighten the world in general. The effects were ſoon remarkably viſible in the literature of Germany; eſpecially as the taking of Conſtantinople* occaſioned many learned men to leave that place and ſettle in Italy, and from thence diffuſe more light in philological and other knowledge in Germany.

On the other ſide it might eaſily be foreſeen, that the conſequences of ſuch a rapid and general diſperſion of particular writings, or intelligence, not only in a literary but political line, would in the end be either very advantageous, or very prejudicial. A juridical queſtion might ariſe on this ſubject, not eaſily to be anſwered, whether the invention and uſe of printing ought to be left to every one's natural liberty; and whether, and how far, particularly in the Germanic Empire, the ſupreme power of the Emperor, or the territorial power of an Imperial State,

* By Mahomet II. who put an end to the Eaſtern Empire, which had ſubſiſted 1123 years, in 1453.

State, can interfere with it? But in the infancy of the art, printed impreſſions were in general conſidered, in the ſame light as manuſcript copies. It was as little thought of, therefore, to reſtrict the eſtabliſhment of preſſes, as to ſet bounds to the labours of tranſcribers, or think a grant from the magiſtrates neceſſary, for a man, who made tranſcribing his profeſſion, to enter into the ſervice of another, or earn his bread by the employment himſelf. At firſt, therefore, every body carried on the buſineſs of printing wherever an opportunity offered. The chief thing was, that it was not wholly done without the cognizance of the magiſtracy; but either under the eye of a territorial Lord, or the government of an Imperial town. Much leſs was there any idea at firſt of making it a royal prerogative of the Emperors, which would be now ſtill more exceptionable, if any new prerogative ſhould be appropriated to the Emperor, which excluded the territorial power of the States.

It is true, that there are veſtiges from the year 1496, that during the ſucceeding Emperor's reign, one Dr. Jacob Oeſsler, of Straſburg, was appointed ſuperintendant-general of the Roman Empire, by the Emperor. In ſeveral books which were printed between the years 1496 and 1517 at Straſburg, there were even privileges granted to prevent the printing of them in other places: but they ſeem to have had but little effect beyond the diſtrict of Straſburg; at leaſt they afterwards were not of any permanency (*a*).

With

(*a*) Pütter's Treatiſe on Copy-right. Gottingen, 1774. p. 173.

With reſpect to other events which happened in the Empire during the long reign of Frederick III, and which have preſerved their effect to the preſent day, the moſt remarkable are, two or three alterations which were made in the conſtitution of the Diet. The frequent Diets which were convened by Frederick, almoſt eſtabliſhed a cuſtom, for neither the Emperor nor the States to make their perſonal appearance ſo often as was uſual for both of them formerly. The Emperor's plenipotentiaries appeared under the name of Imperial Commiſſioners, and thoſe of the States under the name of Ambaſſadors, Counſellors, Envoys, and Deputies.

The plenipotentiaries of this kind, had to take particular care, that the rights of their principals were not infringed. For this reaſon they were more particularly attentive to their rank, their order of ſitting, and the delivery of their votes, than when the Princes were perſonally aſſembled. Hence many things may probably have ariſen in the preſent conſtitution of the Diet; an example of which I have already mentioned in the ſeat and voice of the Houſe of Auſtria.

Amongſt other things we find, that the firſt example occurred, during this reign, of the deputies from the Imperial cities being divided, in the year 1474, as they are at preſent, into the two benches of the Rhine and Swabia.

BOOK IV.

First Period of Modern History.

THE EMPEROR MAXIMILIAN I.

1493—1519.

CHAP. I.

The Public Peace, Imperial Chamber, and Division of the Empire into Circles.

The public peace and Imperial Chamber inseparably established on the same day—The first by the universal and perpetual abolition of the right of private war—The collegiate form of the Imperial Chamber, a Judge, and a number of perpetual Assessors—Right of presenting the latter, granted to the Electors and Circles—Support and matricula of the Chamber—First cause of the visitation of the Chamber—At first very defective arrangements for putting the laws in execution—The constitution of the Circles at last principally made use of for that purpose.

AT last the important and long wished for change in the internal welfare of all the Germanic Empire, followed, in the reign of Maximilian I, by the total abolition of the right of private war, which had hitherto prevailed, by means of a perpetual and A. C. 1493

and univerſal public peace. At the ſame time a tribunal of juſtice was inſtituted, under the name of the Imperial Chamber, which it was hoped would ſuperſede the cuſtom of ſelf-defence, and vigorouſly protect the public peace of Germany.

Both the public peace and Imperial Chamber were, in fact, of an inſeparable nature. As long as it was allowed for every one to procure juſtice by private power, there could be no idea of having recourſe to a regular tribunal. Whoever has confidence in his own ſtrength, will rather make uſe of it when left to his choice, than leave the queſtion, Whether he is right or not? to the deciſion of any court of juſtice. Where the right, therefore, of private war is exerciſed, tribunals muſt remain inactive. But if there are no tribunals, or if they are deficient in authority, or not provided with the neceſſary power to enforce their ſentences, ſelf-defence will be difficult to be prevented; becauſe ſome method of obtaining right muſt exiſt of neceſſity: and if ſelf-defence is declared to be a breach of law, who will ſee puniſhment inflicted, if there is no regular tribunal inveſted with ſufficient power for the purpoſe?

The preceding hiſtory of Germany contains the moſt cogent proofs of all this, founded in experience. All the attempts to alleviate the miſeries of private wars were hitherto ineffectual, as long as the adminiſtration of juſtice was not better eſta-

bliſhed;

lished; and no attention could be paid to this, as long as the right of private war prevailed. CHAP. I.

At last the error was perceived, which had hitherto prevailed, of wishing to establish one without the other. The public peace and the Imperial Chamber, therefore, were both established on the same day, August the 7th, 1495, by the Emperor Maximilian's subscribing the ordinances which were formed for both. Maximilian himself, indeed, did not show much more inclination to it than his father had done before him. His propositions to the Diet at Worms, related at first only to a supply of men and money against the French and the Turks; but the States would not consent to grant supplies for any foreign purposes, but upon the condition that he first established the internal peace of Germany. Maximilian therefore was obliged to adopt the plan proposed already, in the year 1486, by the States for the public peace and the Imperial Chamber, though not without declaring his objections. Thus these two objects, both of which were of such infinite importance, were at last accomplished; and Maximilian's objections were of so little avail, that the States procured more weight in the direction of the new legislation than the Emperor. A. C. 149[5]

With respect to the public peace, it seemed at last to be perceived, that the attempts which had been formerly made to establish it for this or the other country, and only for a certain number of years,

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years, or even to allow the right of private war, provided there were three days previous notice, were not ſufficient. It was abſolutely neceſſary for this horrid cuſtom to be totally aboliſhed, and that all the meaſures which were adopted for that purpoſe, ſhould extend for ever throughout the whole of Germany, without reſtriction either to time or place. If the legiſlative power therefore of the Emperor and Empire were united by the eſtabliſhment of this perpetual and univerſal public peace, and ordained that no one ſhould dare to challenge another, make war upon, plunder him, make hoſtile irruptions into his country, or otherwiſe injure him; and that none who were guilty of ſuch practices ſhould be harboured, protected, or even tolerated; but that, if any one thought he had a claim upon another, he ſhould have recourſe to a court of judicature, on pain of being put to the ban of the Empire if he refuſed, and that the Imperial Chamber ſhould ſee the law enforced; it was natural to expect the moſt beneficial conſequences.

The Imperial Chamber, as it was now eſtabliſhed, principally diſtinguiſhed itſelf from the former inſtitutions in this, that not only the perſon of the Judge, who repreſented the Emperor himſelf, but all the other members of the Court, to whoſe voice the deciſion of a cauſe was ſubmitted, or, as they were at that time very ſuitably denominated, URTHEILER, Judges, and afterwards called, after the Romans, Aſſeſſors of the Court, were appointed, to hold their offices perpetually. By this the advantage was

gained

of a perpetual collegiate deliberation, in the ſame manner as at preſent almoſt all courts of juſtice have been eſtabliſhed with happy conſequences on a ſimilar footing; but at that period the Imperial Chamber was the firſt inſtitution of the kind.

The principle which formerly prevailed, that no one could be judged except by his equals, was only ſo far preſerved, that the Judge of the Imperial Chamber, as cauſes in which both Princes and Counts were concerned might come before him, could not be any other than a perſon of high nobility. There was a wiſh, likewiſe, that there might be Princes and Counts amongſt the aſſeſſors. Half of the aſſeſſors were at leaſt to be taken from the nobility; and the other half from dignified doctors or licentiates, both in civil and canon law. Thus the Imperial Chamber ſeemed already to have had the ſame inſtitution, which is uſual in many tribunals at preſent, that the two benches, of nobility and perſons ſkilled in the law, ſhould be diſtinct from each other. Afterwards, however, it was thought ſufficient, when an aſſeſſor was either of old nobility, or a doctor: for in both caſes the ſame ſtudies are requiſite, particularly the neceſſary knowledge of Roman law, and the common law generally practiſed throughout Germany.

When the Imperial Chamber was firſt eſtabliſhed, there was no ſmall difficulty in finding a ſufficient number of perſons who were fit to be aſſeſſors, and who would accept of the office. Recourſe was

at firſt had to the Diet; but inſtead of ſixteen, the number fixed upon in the ſtatutes of the Chamber, only ten could be collected. Soon afterwards, the whole number of Electors, the Emperor's hereditary territories, and the other States of Germany, as they were divided into ſix Circles, were allowed the right of preſentation, or propoſing perſons for this office, in the ſame manner as preſentations are made to eccleſiaſtical benefices. By this method there was reaſon to hope, that perſons might be procured from all the different parts of the Empire, who were well verſed in the various kinds of law, which are almoſt as numerous in Germany, as the States which compoſe the Empire; over which, however, the Imperial Chamber was to be eſtabliſhed as the higheſt court of appeal. The States procured at the ſame time an important privilege by this, that they had it in their power to preſent men of abilities and integrity to be aſſeſſors to the Chamber: a circumſtance which alone gave reaſon to hope, that there would be conſtantly a proper choice of ſkilful men, as it might be reaſonably expected that a State would ſend the moſt ſkilful man it could find to a tribunal, which was the laſt reſort for cauſes in which both the ſovereign and his country were concerned. It was ordained by the ſtatutes likewiſe, that every perſon who was preſented, ſhould undergo a trial of his abilities and integrity; and, in caſe he was not found upon trial proper for the office, be rejected.

CHAP. I.

One of the greateſt difficulties which occurred in the inſtitution of the Imperial Chamber, was the method adopted for the maintenance of its members; till at laſt, in the year 1500, the Imperial States undertook it themſelves. For this purpoſe, a particular calculation was made, how much each of the Imperial States ſhould contribute as his annual quota, in two terms, or CAMMERZIELEN, as they were called; which have been continued ever ſince, except that they have at different times been conſiderably raiſed, in proportion as the number of aſſeſſors, or their ſalaries, in order to keep pace with the price of proviſions, have by degrees increaſed. The Imperial Chamber, therefore, has its own MATRICULA, which is the only perpetual aſſeſſment on the Empire annually levied.

The accounts are now ſo regulated, that a liſt is annually printed of the payments and arrears of each of the States, and ſent, with a ſtatement of the expenditure, to the Diet. At that time it was thought, that theſe accounts could only be kept in the place where the Imperial Chamber itſelf was. They conſidered likewiſe, that a court which had no ſuperior on the ſpot, could not be free from defects and imperfections; and that, for that reaſon, it would not be amiſs, if proper perſons were occaſionally ſent, in the name of the Emperor and Empire, to inſpect its proceedings. It was reſolved therefore, in the year 1507, to appoint commiſſioners in the name of the Emperor and Empire, to examine annually into the

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defects and neceſſities of the Chamber, and ſupply them as they thought proper, as well as to receive the accounts. This was the origin of the viſitation of the Chamber, which has, ſince that, been variouſly regulated, and ſtill continues an important part of the Germanic conſtitution.

One circumſtance which muſt neceſſarily ſtrike every perſon who reflects upon the ſubject, is, that at the eſtabliſhment of the Imperial Chamber, and the public peace, ſo little proviſion was made for putting the edicts of the Chamber in execution, or forming ſuch ſuitable arrangements as were neceſſary to procure the public peace ſufficient ſupport. The regulations now made for this purpoſe, by the diviſion of the Empire into Circles, and the propoſitions made with the ſame view during the reigns of Wencelaus and Albert II, did not ſeem at the preſent inſtitution of the Imperial Chamber, and public peace, to have been thought of. It was a happy circumſtance that the Swabian league was ſtill in being, which could always be employed, upon application of the Chamber, to put its ſentences in execution. An Imperial Regency, which was eſtabliſhed to act in conjunction with the Emperor, as a perpetual council, nearly in the ſame manner as the *Conſeil permanent* of Poland, occaſioned that beſides the Electors, and the Emperor's hereditary dominions of Auſtria and Burgundy, all the other States were divided into ſix Circles, each of which was likewiſe to ſend a deputy to it. Though this

regency

regency did not continue long, the institution of the Circles was preserved, to regulate the future presentation to the assessorships in the Chamber. At last it occurred, that this division of the Circles might be made use of for the preservation of the public peace, and enforcing the judicial sentences of the Chamber. Maximilian therefore enacted in 1512, that every Circle should elect an officer to take the command in the field, of the army levied by the States, in cases of necessity. The whole Germanic Empire, including the Electors, and the Emperor's patrimony, was now divided again into ten Circles. In order to be better acquainted with this division, as it has continued to the present day, it must be observed, that the number of the Circles were originally only six, amongst which neither the Electors, nor the Emperor's patrimonial dominions of Austria and Burgundy, were reckoned. These are properly denominated the six ancient Circles, viz. Franconia, Swabia, Bavaria, the Circle of the Upper Rhine, the Lower Rhine, or Westphalia, and Saxony. Each of these Circles consisted of several spiritual and temporal Princes, Prelates, Counts, and Imperial cities. None of the Electors, nor the above-mentioned hereditary dominions of the Emperor, were included till the year 1512, when the four new Circles were formed, of Austria, which was divided into two, Burgundy, and the Electoral Circle of the Rhine, for the four Electors of Mentz, Treves, Cologne, and the Palatinate, and the Circle of Upper Saxony for the Electors of Saxony and Branden-

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Brandenburg; together with the territories of the Saxon Dukes, and ſome others which were added, as Pomerania, Anhalt, the religious foundations of Quedlinburg, Gernrode, Walkenried, and the counties of Schwartzburg, Mansfelt, Stollberg, Barby, Reuſs, and Schœnburg, which, ſince that, have been ſeparated from the Circle of Lower Saxony. Under the name of the Circle of Burgundy, Maximilian in fact acknowledged the connexion of the Netherlands with the Germanic Empire; but with reſpect to the kingdom of Bohemia, this connexion was then ſo weak, that Bohemia was neither reckoned among the Electorates, of whom only ſix are mentioned, nor included in the Circles, to the latter of which it does not yet belong.

CHAPTER

THE TAXAN... [library stamp]

CHAPTER II.

The Imperial Aulic Council, Court of the Princes, and Resort to the Court of Austregues (*a*).

Origin of the Aulic Council—Its collision with the Imperial Chamber—Originally no concurrent jurisdiction of the two courts—The ancient Court of the Princes might still continue, notwithstanding the Imperial Chamber—The practice of resorting to a Court of Austregues preserved—and not only conventional Austregues, but by legal authority—except that a commission from the Emperor was necessary to render such resort constitutional—which, according to rule, cannot be omitted—This resort considered, since that time, sometimes in a favourable light, and sometimes as prejudicial.

THE manner in which the business of the Imperial Chamber was conducted in collegiate deliberations, and the success which attended it, probably gave Maximilian the first idea of establishing similar colleges for the dispatch of business at his court. Thus in the year 1501, he erected a College of Regency at Vienna, an Exchequer, and an Aulic Council, or a college of counsellors, for causes where he was personally appealed to, to assist him with a written opinion. This Aulic Council was designed not only to take cognizance of affairs which concerned the Empire, but of matters relative to his own

(*a*) See p. 244.

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own hereditary dominions. By virtue of a new edict, which Maximilian published on this subject on the 24th of May, 1518, amongst the eighteen persons of whom the Council was intended to consist, five were to be nominated from the nobility and doctors of the Empire, and the rest from his own dominions. Afterwards, however, owing to the accumulation of business, the Austrian affairs were separated from those of the Empire, and the latter left to the Aulic Council alone; from which circumstance it acquired the name of REICHSHOFRATH, or Aulic Council of the Empire, a name by which this college is yet distinguished (*a*).

There are many who derive the origin of the Aulic Council from a much earlier period; as certainly as long as Germany has had its Emperor and Kings, they always had recourse to persons who were about their court for advice. But these were either States of the Empire, who happened to be at court, and enjoyed the Emperor's confidence; or else individuals of the court, or professional men, as, in particular, the Chancellor, Vice-Chancellor, &c. A college of counsellors, such as the Imperial Aulic Council, is not to be met with at the court of the Emperors before the year 1501; and from this year, there are various records which prove its existence.

As

(*a*) PÜTTER on the Origin of the Aulic Council, in the Hanoverian Review, 1750, p. 169; and his *Opuscula*, p. 361.

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As far as the Emperor appointed and gave ſalaries to a certain number of Aulic Counſellors, and conſulted them in matters which perſonally concerned himſelf, ſuch as political affairs, charters, the inveſtiture of fiefs, &c. no one could poſſibly object to the inſtitution. But an attempt was ſoon made to apply to this court in matters of juſtice. Thus the year 1502, it happened that on the application of the city of Cologne, the Elector received a citation from the Aulic Council, to appear at the Emperor's court, and anſwer to the accuſations of the city. The queſtion here naturally aroſe, Whether caſes of law could be brought before an Aulic Council, eſtabliſhed at the Emperor's court by his own authority, when the Imperial Chamber was once eſtabliſhed by the Emperor and Empire, as the only ſupreme tribunal of its kind? and whether, therefore, in a law-ſuit, if a ſummons was iſſued by the Aulic Council, it was the duty of an Imperial State to appear? In fact, it was exactly the ſame caſe as if an action in this country *, inſtead of being brought before the tribunal of Zelle, ſhould be referred to the miniſters at Hanover, or the cabinet at London. At the inſtance of the Elector of Cologne, all the Electors at that time, 1502, directly, and all the Princes ſoon afterwards, took up the matter ſeriouſly. They requeſted the Emperor to aboliſh the new tribunal, which his Majeſty alone had erected; and that the regulations of the Imperial Chamber, which had been once agreed upon, ſhould

* The dominions of Hanover.

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ſhould be left as they were (*a*). Notwithſtanding this, parties, whoſe cauſes properly belonged to the Imperial Chamber, did not deſiſt from making all ſorts of applications to the Emperor's court, ſometimes to get their cauſes decided with greater expedition, ſtopped in their progreſs, or referred to a committee, &c.

The Receſs of the Empire of 1512 expreſsly mentions, that the number of ſuits and cauſes brought before the Emperor's court was daily increaſing (*b*). In general, however, it remained as before, that a legal proceſs could properly only be carried on in the Imperial Chamber. The laws ſpoke always only of the Chamber, as the only ſupreme tribunal of the Empire. That the Aulic Council ſhould have a concurrent juriſdiction, and therefore that there ſhould be two ſupreme tribunals of the Empire, which every plaintiff had his choice of as at preſent, could not poſſibly be aſſerted, according to the conſtitution and Imperial laws of the ſixteenth century.

Another queſtion aroſe, Whether, by the eſtabliſhment of the Imperial Chamber, the ancient Court of the Princes was totally aboliſhed? It was rather to be preſumed, that cauſes which perſonally concerned the honour or life of a Prince, or related to a whole Princi-

(*a*) LONDORP's *Acta Publ.* Vol. I. p. 20.

(*b*) Collection of the Receſſes of the Empire, Vol. II. p. 148. § 8.

Principality, should not be referred to the Chamber, but be reserved for the Emperor to sit in judgement upon, himself, in the same manner as at a tribunal which was held at the court in the year 1235; not with a number of counsellors, who were his own dependants; but that he should decide such causes with the concurrence of impartial Electors, Princes, or Counts. In the statutes of the Imperial Chamber, there was not a word mentioned on the subject; but it might still be presumed, according to analogy and custom. The latter was authorized by the example of Maximilian himself, in the year 1504, when he held a court consisting of several Electors and States, in which he personally presided on a contested succession, between the Palatinate and Bavarian Houses, to the vacant territory of Bavarian Landshut.

Another mode by which the Electors procured justice of each other, or others obtained it from them, and which was particularly mentioned in the statutes of the Imperial Chamber as a custom of very ancient date, was the AUSTRAG, or arbitration of a third Prince; a custom which had been attended with happy consequences in adjusting disputes amongst the Princes, even in the troublesome times when private wars usurped the place of regular courts of judicature. To reject this method of obtaining justice entirely, and suffer the future peace of the country to depend solely upon the uncertain success and stability of the Imperial Chamber, was thought

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too dangerous a meaſure to be adopted at its firſt inſtitution, which was ſufficiently juſtified ſo early as the years 1500 and 1502, when the proceedings of the Imperial Chamber were ſeveral times totally ſtopped.

Many agreements moreover had already been made, that diſputes ſhould in future be referred for deciſion, by the parties concerned, to ſuch Auſtregues, or arbitration. It was a dangerous matter either to annul ſuch agreements as theſe, or make any general alteration. The principle was immediately adopted therefore, and inſerted in the ſtatutes of the Chamber, that thoſe Princes who had admitted the conventional Auſtregues amongſt each other, ſhould punctually obſerve their reſpective agreements.

Others, likewiſe, amongſt whom no ſuch agreements had been made, found their advantage in the cuſtom of a defendant being obliged to conſent to the cauſe being referred to a third perſon for deciſion, on the application of the plaintiff. This practice had been hitherto founded merely upon ancient uſage; but it was converted now into an eſtabliſhed law, that a Prince againſt whom any accuſation was brought, ſhould be obliged to anſwer in the term of four weeks, at the ſuit of his accuſer. It made ſome difference indeed, whether a Prince was accuſed by a perſon of equal rank, or by his inferior. In the firſt caſe, the defendant was to propoſe four Princes, for the plaintiff to make choice

of

of one; in the other case, the defendant Prince was to appoint five noblemen and four professional lawyers from his own council to try the cause, who were on that account absolved from their oaths of fealty, that no consideration might prevent their delivering a faithful verdict. Thus the LEGAL Austregues, as they are called, to distinguish them from the above-mentioned GEWILLKÜHRTEN, or conventional Austregues, were established by law; whereas before, the practice was merely founded upon custom. Where this right of appeal has been once obtained, neither of the two sorts of Austregues can be passed over in future. The only regulation made with respect to this species of tribunal, was, that the Austregues should be considered in the same light as a commission from the Emperor, by virtue of a general and perpetual power granted in the first statutes of the Imperial Chamber, which was to be valid for all Austregues in future.

Hence an advantage accrued, that an appeal could now be made from the Austregues to the Imperial Chamber, in the same manner as from any other commissioners to the persons who appoint them; whereas formerly there was no appeal from these arbiters whatever. There was now therefore a formal resort to the court of Austregues, perfectly consistent with the new system established in the administration of justice by the institution of the Imperial Chamber. According to this regulation, the Chamber became a tribunal, which in general only pronounced

sentence

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ſentence in the higheſt and laſt reſort on the mediate members of the Empire, when any ſubject felt himſelf aggrieved by the ordinary courts of judicature of his own country; and on immediate members, when appeal was made from a court of Auſtregues, and no cauſes were taken cognizance of in the firſt reſort, at the firſt inſtitution of it, but ſuch as concerned a breach of the public peace.

Such exceptions as where a Prince may have an action brought againſt him in the firſt reſort, at the Imperial Chamber, occur ſeveral times in the following hiſtory: otherwiſe it is a ſtanding rule, that Electors and Princes cannot be ſued in the Chamber, before reſort has been firſt had to a court of Auſtregues. In one reſpect it is a very advantageous circumſtance to both parties, that they need not be ſatisfied with a ſingle reſort; but when a verdict has been unfavourable in one, the perſon who thinks himſelf aggrieved may carry his cauſe through the forms of a ſecond court, where it may appear perhaps in a different point of view to the parties themſelves, or their advocates, from that in which it appeared at firſt.

It was formerly conſidered as advantageous even to perſons of an inferior ſituation in life, who were plaintiffs, that the defendant, however powerful he might be, was obliged to abide by the award of the Auſtregues. The Princes conſider it now as one of their moſt valuable privileges, when the caſe occurs

of

of an action being brought against them, that they have it in their power occasionally perhaps to throw difficulties in the way of the process. This has occasioned more frequent attempts at present to avoid a resort to the Austregues; attempts which have been favoured more than once by some late laws of the Empire; but this, on the other hand again, has been the cause of several complaints being made at the Diet, of the resort to Austregues having been illegally neglected.

Even Charles V. attempted to abolish the appeal to Austregues entirely; but his attempt was unsuccessful (*a*). To deprive the States of the Empire of a right, which has been transmitted from their ancestors for so many generations, and confirmed by so many treaties and laws, would be a very difficult matter. This mode of deciding disputes, when properly applied, may certainly be still of use, and be accomplished even without any great prolixity, provided the court of Austregues was composed of States of the Empire, and the parties employed their own agents on the spot, to execute the necessary writings.

(*a*) Vid. Pütter's Literature of the Public Law, Vol. I. p. 119. Note (*a*).

CHAPTER III.

Administration of Justice in the Territories of the States of the Empire, and the firm Establishment of the Roman Law.

Influence of the Imperial Chamber on the territorial administration of justice—Establishment of Aulic Courts of Judicature upon the plan of the Imperial Chamber—Similarity of the statutes of the Aulic Courts with those of the Chamber—Establishment of a new administration of justice in the towns and bailiwicks, as well as on the estates of the nobility—General abolition of the Imperial *Evocations*—Concurrent or joint rights of supremacy, in other respects, of the Emperor and the territorial Lords—Firmer establishment of the validity of the Justinian code of laws—All the provincial common rights not thereby invalidated, though often considered in a wrong point of view.

THE advantages arising from the more accurate regulation of the resort to Austregues, and the institution of the Imperial Chamber, were already very considerable: a direct way was opened thereby for every one to obtain his right from a State of the Empire, whether he was powerful or not. Another advantage likewise attending the institution of the Chamber, which was of no less importance, was, that the States had it now in their power to place the administration of justice upon a permanent footing in their respective territories. Hitherto, not only

only the right of private war, which encouraged ſelf-defence amongſt the mediate members of the Empire, tended to obſtruct it; but it was very natural likewiſe, that the judicial proceedings of the inferior courts could not accompliſh their end as long as diſorders prevailed in that tribunal, which was the higheſt reſort of all, and to which every one had a right of appeal. Of what avail was it, therefore, for a State of the Empire to have the beſt judicial inſtitutions poſſible in his territory, if the ſentence pronounced might be deprived of its efficacy by means of an appeal, where there was no legal method of execution? This was doubtleſs one conſideration, which at laſt made moſt of the Imperial States more earneſtly wiſh for a univerſal public peace, and the eſtabliſhment of a ſupreme tribunal of the Empire, eſpecially as they had already had ſufficient enjoyment of all the advantages which the right of private war could poſſibly afford them. In ſhort, experience ſoon taught them, that in all judicial proceedings, where one reſort muſt be ſubordinate to another, a reformation was not ſo eaſily effected by beginning in the inferior courts, and proceeding upwards, as by properly regulating the ſupreme tribunal at firſt.

As ſoon as the Imperial Chamber was once in order, every Imperial State might expect that the eſtabliſhment of ſubſtantial courts of juſtice, in their own countries, would be attended with more favourable conſequences. In order to render the Imperial

perial Chamber as perfect as possible, it is certain that no State neglected to contribute his part in proposing the necessary laws for it, because every one must have considered this court of judicature as a tribunal before which both he and his subjects were liable to be judged in the highest and last resort. What was more natural, than that every Imperial State who wished to place the administration of justice on a more substantial footing, should imitate the Imperial Chamber, which he considered as the most perfect pattern of its kind, to establish a similar supreme tribunal in his territory? This was the case in almost all the Electorates, Principalities and Counties in Germany; so that, sooner or later, an Aulic Court, as it is called, was erected, which might be considered almost a copy of the Imperial Chamber. The latter was established with the concurrence of the States of the Empire. In the Aulic Courts, the provincial States took nearly a similar part, not only by giving their consent to the regulations which were made, but in a great measure by contributing to their maintenance, and appointing some of the assessors. The Imperial Chamber consisted of a judge and several assessors; an Aulic Court was composed of a judge and several assessors likewise. The judge of the Imperial Chamber ought to be a person of high nobility; so likewise the judge of the Aulic Court must at least be of inferior nobility, &c.

Many

Many of the statutes of the Aulic Courts were almost literally copied from those of the Imperial Chamber (*a*); and afterwards, most of the improvements made in the latter, were adopted in the former. Many of the Imperial States thought themselves fortunate if they could get persons who had been employed for any length of time at the Imperial Chamber, as assessors, or only as advocates, into their service, that they might be capable, from their experience in the highest tribunals, of assisting in forming the statutes of the court, and contributing to regulate the administration of justice. Thus, for instance, Joachim Mynsinger, a celebrated assessor of the Imperial Chamber, was appointed in the year 1555 Chancellor by the House of Brunswick; by which he procured the greatest influence in the acts of legislation of those times, which still form the basis of the courts of judicature in the Brunswick dominions.

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This was so common, that the Aulic Court likewise of the Emperor was imitated by most of the courts

(*a*) This subject is treated of at large by the following authors: James Gottlieb. Sieber, "on the Utility of acquiring a Knowledge of the Process in the Imperial Chamber, proved by the Statutes of different Aulic Courts." Gottingen, 1760. Will. Aug. Rudloff, on the Similarity of the German Aulic Courts of Justice, to the Imperial Chamber. Bützow, 1770. Bernard Gottlieb. Huldr. Hellfeld's History of the Aulic Courts in Saxony, particularly that of Jena. Jena, 1782.

courts of the States, as well as the Imperial Chamber. The affairs of government and revenue were no longer, as formerly, committed to the inspection of individuals; but particular Aulic Councils, or colleges of regency and finance, were established for those purposes, in imitation of the courts at Vienna. Another consequence was, that in many places the Aulic Councils, or colleges of regency, began gradually to take cognizance of matters of justice; as, even now, such a joint jurisdiction may be observed in many places, of the Aulic Court, and the Government itself. Where the Aulic Courts have continued in possession of the jurisdiction alone, it is generally a proof, that the provincial States were properly on their guard, to prevent the courts in which they were concerned, from being eclipsed by other colleges which were solely dependant on the territorial Lord.

The courts of judicature resembled the Imperial Chamber in this respect; that, though they were designed as the first resort for the provincial States, they were at the same time the courts of appeal for all the inferior tribunals, which took cognizance of the causes of the burghers and peasants. But a considerable alteration was made likewise in these courts; as the proceedings were regulated according to the rules of the canon, and civil codes, not only in the towns, but in the country, where formerly, the courts of justice for the peasants, only judged

judged according to usage and common sense; or else the owner of the estate accommodated disputes, or punished offences among the peasants, by personal interference, or by means of his bailiffs or stewards. The Princes now appointed only such bailiffs * in their bailiwicks and domains, who had studied, and had a knowledge of the laws. According to this example, the owners of free estates soon saw themselves obliged to employ justices who had studied likewise, unless they were disposed to suffer the officers, who properly belonged to the sovereign of the country, to exercise jurisdiction in the villages on their estates. Thus, to the great advantage of the German Nobility, a right, which had hitherto formed only a part of their power as Lords paramount, was converted into a formal jurisdiction, annexed to their estates, and generally distinguished by the name of a patrimonial jurisdiction (ERBGERICHTBARKEIT), from what was otherwise merely termed a jurisdiction, which was considered as a part of the supreme power, or as a right conferred by it upon some other person.

 For

* In German, the word AMPTMAN is used, which implies a kind of superior bailiff, who not only takes care of the estate, but has the jurisdiction of the district; for which reason they are generally persons who have studied law at a university; and in the King's Hanoverian domains, frequently noblemen, who in that case have the title of DROST, i. e. Seneschal, instead of AMPTMAN.

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For all these judicial institutions, there was an important order contained in the first statutes of the Imperial Chamber, that every subject should be left to his own ordinary tribunal. Till then it had been the law, that if an Imperial State possessed the jurisdiction over his subjects, it should not exclude the jurisdiction of the Emperor. It was considered perfectly as a matter of choice, whether a plaintiff would accuse the defendant, if he was the subject of an Imperial State, before his own tribunal, or in the courts of justice belonging to the Emperor. Many of the Imperial States had already occasionally sought to remedy this, by procuring exemption from citation from the Emperor (*privilegia de non evocando*); and the Golden Bull had already granted a general exemption (*jus de non evocando*) to all the Electors. Before this, it had been the common rule, till the above-mentioned ordinance of the Chamber now first made it the particular prerogative of all the States of the Empire.

In the succeeding years, this privilege was not merely made use of in the administration of justice: for according to the former constitution of the Empire in the middle ages, it was admitted, that the territorial rights of supremacy vested in the Imperial States, did not exclude the concurrence of the Emperor; as, for instance, the choice always remained of procuring an exemption from taxation, or a privilege of any other kind, either from the territorial Lord,

Lord, or from the Emperor. As ſoon as the Emperor's joint power in the adminiſtration of juſtice, which was one of the moſt important objects of the ſupreme power, was once aboliſhed, means were ſoon found, without waiting for any further expreſs laws upon the ſubject, to exclude the Emperor's concurrence from every other part of the power veſted in the territorial Lord; ſo that at preſent, in all matters which appertain to the power of a territorial Lord, the Emperor is, for the moſt part, excluded from all concurrence whatever.

Another important conſequence attended the inſtitution of the Imperial Chamber. The practice of the Juſtinian code of laws was eſtabliſhed without further heſitation, as the Imperial common law. Not, as many imagine, that it was at this time firſt adopted by the Emperor and the Empire, in the ſame manner as the laws of Lubeck have been adopted by many other towns, or as every State is at liberty to adopt the new Pruſſian code in his territory, on account of its intrinſic value—By no means! The matter was not at all conſidered in this point of view, as if it was neceſſary for the Roman law to be now firſt adopted in Germany; but Germany was conſidered as the Roman Empire itſelf, or at leaſt as a part of it; and the Emperor Juſtinian as one of the predeceſſors on the throne, both of the Emperor Maximilian, and of all the former Emperors who had reſided, ſince the days of Juſtinian, either at

 Conſtanti-

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Conſtantinople or at Rome. When it was inſerted in the oath, therefore, which was preſcribed to the aſſeſſors of the Imperial Chamber, that they ſhould judge according to the common law, there was no idea of a new adoption of the Roman law; but it was conſidered as a thing already acknowledged, that the two codes, which were indebted to the Popes and Emperors for their authority, were the common laws of the Roman Empire, and therefore the common law of Germany.

This, however, did not totally exclude the practice of the municipal laws of the country. Notwithſtanding the power which the Roman law acquired in Germany, there were ſtill ſome laws which univerſally prevailed before, and could not be ſupplanted; ſuch, for inſtance, as that treaties were valid without the ceremonies ſtipulated in the Roman law, and that family hereditary compacts were not inadmiſſible. Theſe, however, were conſidered at that time as particular cuſtoms of Germany, in the ſame manner as particular countries or places in the ancient Roman Empire might have had their peculiar cuſtoms; or, when any thing was ordained by a new Imperial, which differed from the Roman law, there was ſuppoſed to be the ſame relation between them, as between the ancient Roman laws and thoſe of Juſtinian. This relation was carried ſo far, in the repreſentation then made of it, that in matters of great importance in the public

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public law of Germany, they made no scruple of referring to the times of the ancien Emperors at Rome and Constantinople, and applying every thing which they had a right to do, to the Emperor of Germany, as if he had been the very next successor to the government.

J. M. Ford

CHAPTER IV.

Other remarkable Occurrences in the Reign of Maximilian I.

Imperfection of the studies in the Universities, especially in the faculty of the Law—Difficulty of persuading the laity to study, and of refining the manners of the Nobility—Increasing circulation of money, and its effect—Alteration in the military state—Unsuccessful war of Maximilian I. with the Swiss, and in the league of Cambray—Introduction of the title of ELECTED ROMAN EMPEROR—Two fortunate intermarriages, which secured the succession of the House of Austria to the thrones of Spain, Hungary, and Bohemia.

THE improper application of the Roman law in general, connected with the institution of the Imperial Chamber, and the total neglect of the municipal laws of Germany, which I have already observed, was no doubt the consequence of the state of literature. Although the number of German Universities was already so much increased (*a*), still there was nothing for those who devoted themselves

(*a*) Including the two last founded Universities of Wittenberg, and Frankfort on the Oder, there might at that time be reckoned no less than thirteen universities of Germany.—Vide p. 313, Note.

MOEHSEN, in his History of the Sciences in the Mark Brandenburg, p. 365, 372, mentions a curious dispute concerning the venereal disease, which was the first occasion of the foundation of both the

selves to the ſtudy of law to learn, except what they met with in the two Latin codes; and this was unconnected with any hiſtorical knowledge, and deſtitute of thoſe ideas which can only be ſupplied by ſound philoſophy, a knowledge of a juſt and univerſal public law, and the law of nations *. Somewhat more acquaintance with Roman and Grecian authors began indeed here and there to enlighten the underſtanding of a few (*a*); but an intolerable ſcholaſtic philoſophy, and too great a neglect of the hiſtory of their own country, prevented all improvement in the ſcience of law, particularly where it was neceſſary to preſerve a counterpoiſe againſt the evil application which was introduced of foreign laws, and ſuch as were by no means ſuitable to Germany.

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It was with the utmoſt difficulty that the laity of this age could be perſuaded to apply themſelves to ſtudy. The time of the Nobles, in particular, was too much devoted to the favourite diverſions of

the above-mentioned new univerſities; that the Univerſity of Wittenberg was regulated on the plan of that at Tübingen in 1502, as that had been modelled after Bologna. The Univerſity of Frankfort, on the contrary, was modelled after Leipſic in 1506, and was therefore on the ſame plan as thoſe of Prague and Paris.

* *Jus publicum et gentium.*

(*a*) As Conrad Celtes, Conrad Peutinger, Deſiderius Eraſmus, John Trithem, John Aventin, &c.—Pütter's Literature of Public Law, Vol. I, p. 91, 98.

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of hunting, riding, and tournaments; and a paſſion for war, and the exerciſes ſuitable to chivalry was too deeply rooted (*a*), to admit of any general taſte for literary purſuits among the Germans (*b*). On this account, the public peace itſelf met with incredible obſtacles before it was accompliſhed (*c*). One need only read the life of a Götz of Berlichingen (*d*), to be convinced of the difficulty of reſtraining

(*a*) In a book called Hints for the Laity, printed in the year 1531, the author adviſes a young Nobleman, a friend of his, to apply himſelf to ſtudy, in order to fit himſelf for ſome employment in his country. Among others is the following paſſage: "Like "the reſt of the Nobility, you have hitherto applied yourſelf "to military affairs, the chace, and other amuſements, more than "to what is really rational. Do not ſet yourſelf againſt application "to writing; you will then acquire a handſome ſalary, be pre-"ferred to reputable offices, and even preſide in courts of judi-"cature. Be diligent therefore; for this is equally as liberal "an employment as galloping after foxes and hares."

(*b*) John von Dalberg, who died in 1503; Ulric von Hutten, who died in 1523; Herman, Count of Nuenar, in 1530; Sebaſtian von Rotenham, 1532; are rare exceptions.—Pütter's Literature of Public Law, Vol. I. p. 91.

(*c*) Many private wars were ſtill carried on, and attended with more dangerous conſequences; but ſecretly, through fear of the Imperial Chamber, and the puniſhment inflicted upon thoſe who broke the public peace. Thus the Receſs of 1512 complains of unheard-of miſdemeanours; that people ſecretly fell upon each other, blinded, and carried off, and confined each other in priſon, or elſe ſold, ſecretly aſſaſſinated each other, &c.—Collection of the Imperial Archives, Vol. II, p. 142.

(*d*) The Life of Göts, of Berlichingen Nurenberg, 1731.

In the fourth volume of Meusel's Inquiry into Hiſtory, a particular declaration of war occurs in the year 1513, from him, againſt

restraining the Nobility of Germany from the dreadful practice of private war (*a*). The Emperor Maximilian, it is true, made some attempt to reform the barbarous manners (*b*), which were the natural cause of such disorders, and particularly the custom

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against the city of Nurenberg, where he waylaid the merchants returning from Leipsic with a hundred and seventy horse, plundered them of all their property, and carried many of them off prisoners. An edict was issued indeed from the Imperial Chamber, putting him under the ban of the Empire, and sentencing him to pay fourteen thousand florins for damages. The Bishop of Wurtzburg himself, however, contributed seven thousand of them; and in consequence of this he was released from the ban.

(*a*) In a memoir published by one of the members of the free Imperial Nobility, even about the year 1620, it is mentioned, with a kind of sorrowful regret, that the custom of private war was formerly very advantageous, as long as many noble families kept themselves together, and other States, who were of tolerably good rank, such as neighbouring Bishops, Prelates, and Counts, afforded each other mutual assistance; but that since that time, all sorts of misunderstandings had arisen, and that the old honest feuds, on account of a single abuse of them, or rather, *ad æmulatorum artificiosas instantias*, were abolished by the establishment of the public peace. In short, every thing had been since thrown into confusion.—F. C. Möser's Miscellanies, B. II. Frankfort, 1752, p. 32.

(*b*) It is really shocking to read only what occurs in the Imperial laws of the sixteenth century, concerning blasphemies, curses and oaths, divided even into the different classes of curses and oaths of the nobility, and those of the grooms, &c.—Collection of Recesses of the Empire, Vol. II. p. 560.

What must we think of the manners of an age, when it was no uncommon punishment to bury people alive, to boil them alive in

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custom of drinking to excess (a); but all his attempts were fruitless (b).

The discovery of America, and the extraordinary produce of the Erzgeberg mines in Saxony (c)*, contributed

in oil, to put out their eyes, pierce them through the cheek with red-hot irons, &c. which we find in SILBERMAN's History of Strasburg, so late as the year 1510 and 1515; or when we find a Duke Ulric, of Wurtenburg, scorching the arms and legs of one of his Council, a man of a very reputable family, at a coal fire, and after pouring brandy upon his body, setting him on fire!—SPITTLER's Hist. of Wurtenberg, p. 112.

(a) At the Diet of 1495 it was resolved, that the Emperor should write to all the Electors, Princes, and States, and desire them not to allow the servants of their Courts, nor any of their subjects, to continue their custom of drinking glass for glass, filling bumpers, and observing other such rules †, but to punish them severely: and the Emperor himself was admonished to forbid the same, and set the first example at his own Court.—Collection of Recesses of the Empire, Vol. II, p. 26, § 38.

(b) In 1524, several ecclesiastical and secular Electors and Princes formed a particular agreement with each other, entirely to forbear from, or at least not indulge themselves so much in blasphemous language, and hard drinking, except when they came into such countries where it was still customary to drink healths, as in the Netherlands, Saxony, the Mark, in Mecklenburg, and Pomerania.—PÜTTER's Elements of German History, p. 391.

(c) GMELIN's History of the Mines in Germany, Halle, 1783, p. 278. According to one of his reports, of the produce of the mines, from the year 1542 till 1616, about eighty hundred weight of silver, and near a thousand hundred weight of copper, were

† DAS DRINKEN, ZU GLEICHEN, VOLLEN UND HALBEN NICH ZU GESTATTEN.

tributed in some measure to refine the manners of the times, by gradually promoting the increase of luxury (*a*), and bringing into circulation a greater quantity of money. But this circumstance had evidently the greatest influence in raising the price of provisions (*b*); and happy would it have been for Europe, if the appearance of a dreadful malady had

annually delivered at the office for receiving the tenths belonging to the Elector of Saxony.

* In the Ertzgeberg mountains of Saxony, where the productive silver mines near Freyburg, had been worked ever since the year 1171, a very rich tin mine was opened in 1548, which occasioned the building of the town of Altenberg. In 1471 a new silver mine was worked where the town of Schneeberg was built. In the year 1477, Duke Albert dined off a mass of silver ore, which was dug in the mines, and afterwards produced four hundred quintals of silver. The tenths of this mine amounted, in the first thirty years, to 324,937 hundred weight of silver, or 5199 tons of gold. PÜTTER's Elements of German History, p. 380.

(*a*) At the marriage of John, surnamed the Stedfast, Elector of Saxony, in the year 1500, no less than eleven thousand persons dined every day at his expence; and provender was furnished by the Court for seven thousand horses.—GLAFEY's History of Saxony, p. 135.

(*b*) In North Holland, in 1500, a cow cost five florins, which now costs a hundred. Gottingen Review, 1780, p. 1293. In the year 1512, Duke Henry of Saxony gave his Chancellor one hundred florins for his salary. GLAFEY, p. 112. About the year 1515, Richard Crocus, the first Professor of Greek at Leipsic, received a salary of ten ducats a year; and Francis Lambert, for reading lectures for half a year, received a present of fifteen groschen.*—Gottingen Review, 1779, p. 134.

* About two shillings English.

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had not been connected with the discovery of America, which, while it proves the natural punishment of vice, has spared neither Popes nor Cardinals, nor the throne of royalty itself (*a*).

Maximilian was the first who introduced an improvement in the art of war, by dividing his army into regiments. Each of these consisted of three or four thousand men, and had its Colonel, its Lieutenant-Colonel, and its own jurisdiction, under the inspection of an officer, called a FELDSCHULZ, or Justice of the Army. The regiments were subdivided into companies; and these into inferior divisions, which had each a particular corporal. These regulations were occasioned by the new method of making war, in which the use of gunpowder was now becoming general, though there was at that time no other method of firing a gun than by means of a lighted match. In an engagement, the infantry were placed thirty or forty men deep, till Charles V. reduced them to fifteen or twenty, Gustavus Adolphus to ten, and Frederick to three.

The

(*a*) It is worth while to read the accounts given of this disease, in a book entitled, *De Morbo Fardo his Temporibus affligente*, published at Rome in 1500, by Pet. Pintor, a Spaniard, and physician to Pope Alexander VI, in MOEHSEN'S Hist. of the Sciences in Brandeburg, p. 368, 371.

Among many others, it is said, that Berthold, Elector, and Archbishop of Mentz, died of this disease in 1504. SPANNENBERG. Henneb. Chron. p. 159.

The military enterprizes in which Maximilian himſelf was engaged, were ſeldom ſucceſsful. The effects of two in particular, have been felt by Germany to the preſent day. One of theſe was, his war with the Swiſs confederates in the year 1499, when he not only failed in his attempt to repair the loſs which had formerly been ſuſtained by the Houſe of Auſtria in Swiſſerland, but in his deſign likewiſe which he had at the ſame time, of keeping the country obedient to the Emperor and Empire, and eſtabliſhing the authority of the new inſtitution of the Imperial Chamber. The confederacy however continued as it was, and, in fact, became totally independent of the Germanic Empire, though the ſeparation was not confirmed by any poſitive articles of peace.

Maximilian was no more ſucceſsful in the league which he formed with ſeveral other powers at Cambray, againſt Venice, in the year 1508. The deſign of this league was the total deſtruction of that republic; but it found means to ſeparate the allies, and preſerve itſelf in its former ſtate. Since that period the State of Venice has been ſo much the more tenacious of its privileges, and eager to preſerve the poſſeſſion of perfect independence, and for that reaſon has, ever ſince, ſent an ambaſſador of the firſt rank to the Imperial Court.

Maximilian's principal reaſon for joining the league of Cambray was, becauſe the Venetians, in an

BOOK IV. an expedition which he proposed making to Rome, had refused him a passage through their territories. The consequences of this unsuccessful expedition have continued to the present day. Julius II, who was then in the Papal chair, wished that Maximilian's intended expedition might not take place, as the coronation of the Emperor at Rome, without which, according to the practice of those times, the title could not be adopted, was the principal object of it; and declared, of his own accord, that Maximilian and his successors might continue, without prohibition, to bear the Imperial title, and that the coronation at Rome should be dispensed with; but that they should be called in future, ELECTED Roman Emperors. Maximilian accepted of this declaration, and immediately promulgated, that he would in future bear the title of ELECTED ROMAN EMPEROR, and King of Germany, which has been ever since continued.

Although Maximilian failed in his military enterprises, he was successful in the negociations which he made in order to form advantageous matrimonial alliances for his issue. The intermarriage of his son Philip with Joanna, the Infanta of Spain, and the marriage of the Infant John, in October 1496, with his daughter Margaret, gave his grandson Charles an early prospect of succeeding to the throne of Spain, which Maximilian himself lived to see accomplished in 1516. He was no less successful in procuring an equal advantage for his other

other grandſon, Ferdinand, in 1515, by eſpouſing him to Anna, the daughter of Uladiſlaus, King of Hungary and Bohemia, and by the marriage of Lewis, that King's ſon, to his own grand-daughter. Diſtant as the hopes of any advantage ariſing from theſe intermarriages muſt have been then conſidered, yet it actually happened ſo early as the year 1526, that the crowns of Hungary and Bohemia devolved through theſe channels to the Houſe of Auſtria.

CHAPTER V.

The Commencement of Commotions in the Church, occasioned by Martin Luther.

The tranquillity of the Pope, which he proudly flattered himself was fully established, suddenly interrupted—This interruption occasioned by the doctrine of indulgences, and the profitable commissions granted from Rome for the sale of absolutions, now in general practice—The care of them in Saxony committed to John Tetzel, when Martin Luther was professor of divinity at Wittenberg—Luther's disputation on the subject of absolutions, and correspondence with Tetzel—Prosecution ordered to be commenced against him at Rome for heresy—Critical situation of Luther till the Emperor's death, and the vicariate of the Elector of Saxony.

A. C. 1517. CIRCUMSTANCES in general seemed to concur, during the reign of Maximilian, in bringing a variety of important affairs into agitation; but all of them either failed in their accomplishment, or else continued in an undetermined state, though there was every probability of their being the cause of great revolutions in future. One event of this kind, which happened towards the conclusion of the Emperor's reign, was attended with the most important consequences, by producing the most unexpected commotions in the Church. At a period when the Papal Court enjoyed the fruits of the most absolute spiritual monarchy, in proud tranquillity, after the victories gained over all the ecclesiastical Councils

Councils of the preceding century, and when the dreadful image of the ſtake at which Huſs had ſuffered, muſt have been alone ſufficient to check the zeal of every confeſſor of the truth, an obſcure individual ventured from his cloiſter to expoſe an abuſe, which, though it was univerſally acknowledged as ſuch by all who reflected on the ſubject, and were the leaſt enlightened, yet it was equally obvious that the Pope, and all who were by any means intereſted, would not eaſily abandon it—becauſe the profits it pr duced were immenſe.

An idea had prevailed for ſeveral centuries, that the penance impoſed by a confeſſor, ſuch as faſting for a certain number of days, repeating prayers, &c. might be changed, at the pleaſure of the Pope or Biſhop, into an obligation of performing ſome other act of piety, or even totally diſpenſed with. To grant indulgences for forty days at anniverſary feſtivals of the Church, was a power which properly belonged to the Biſhop (*a*). The Popes, however, aſſumed the unlimited right of granting a perfect abſolution for a number of years, or even for ever. It had been cuſtomary to grant unlimited abſolutions of this nature, during the times of the cruſades, to thoſe even who took part in them by contributing a liberal ſum of money *(manus adjutrices)*. There is no doubt but that this ſort of abſolution was originally intended only as a diſpenſation

(*a*) Cap. xiv. 10. *De Pœnitentiis et Remiſſionibus* of Innocent III. 1214.

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ſation from the performance of exterior penance; but the common people ſoon conſidered it as the remiſſion of the guilt of ſin; and at laſt an entire new doctrine was founded on the following principles. If Chriſt had ſhed but one drop of his blood, it would have been ſufficient to have procured the reconciliation of mankind with God. By his agonies and death he ſuffered incomparably more than was requiſite. He intended by this to lay up an inexhauſtible treaſure for the Chriſtian Church, which has been continually increaſed by the worth of the merits, and good works of the ſaints. This treaſure of meritorious works was committed to the Vicar of Chriſt, to be diſtributed among Chriſtians, that every one might place ſo much to his own account, in proportion to his own deficiency, or elſe deduct and abſolve ſo many ſins as were neceſſary, from this inexhauſtible treaſure (*a*).

An opinion prevailed, that the Pope had it not only in his power to diſpenſe with the exterior puniſhments impoſed according to the diſcipline of the Church, but to grant a greater or leſs degree of

(*a*) A Bull iſſued by Clement VI, in the year 1342, eſtabliſhed theſe doctrines as articles of faith.—Hiſtory of the Proteſtant Doctrines, by GOTTL. JAMES PLANK, Vol. I. p. 30, &c. This claſſical book deſerves to be impartially compared with that part of Schmidt's Hiſtory of the Germans which treats upon this ſubject, though in other reſpects ſo admirably written; or even with Maimbourg's *Hiſtoire du Lutheraniſme*, by every one who has read thoſe volumes.

of abſolution for ſins, on certain conditions, on a preſuppoſed repentance and penance. In former times ſuch conditions were ſometimes cruſades, ſometimes a pilgrimage to the Jubilee at Rome, ſometimes a contribution of money to a war againſt the Turks, towards the building of new churches, or for other ſimilar purpoſes. At laſt, in the fifteenth century, an idea occurred of ſending Papal Commiſſaries to different nations, to traffic with indulgences, according to the reſpective wants of the people, and either place the profits to the account of Rome, or elſe pay a certain ſum of money for the purchaſe of the whole, by way of contract (*a*). Such Indulgence-Commiſſaries, or rather Sub-commiſſaries, deputed again from them, travelled from one town to another, and from country to country. At every place where they arrived, they made their entry with a public proceſſion, and opened their commiſſion with a ſermon in praiſe of the value of indulgences. The people then reſorted, one after the other, to their houſes, to agree upon terms. After this they granted a patent, or letter of indul-

 gence,

(*a*) As farming in general, in certain circumſtances, is attended with many advantages, particularly when the owner of the property is at too great a diſtance to inſpect the revenues himſelf, the Court of Rome at laſt adopted this as the moſt convenient method of collecting the profits of indulgences. The farmers general, who took whole provinces upon them, had inferior contractors under them; and theſe again employed people, who by theſe means endeavoured to enrich themſelves.—SCHMIDT's Hiſtory of the Germans, Vol. V. p. 47.

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gence, for which at laſt a printed form was made uſe of, where it was only neceſſary to write the name, and circumſtances of each particular caſe, as in printed paſſports. When any of thoſe who were provided with ſuch letters of indulgence came afterwards to confeſs, and his father confeſſor was going to impoſe a penance of a number of prayers, faſtings, &c. upon him, or otherwiſe make his conſcience burthenſome, he had only to produce his letter of indulgence, which ſerved immediately for a diſcharge in full, and ſaved him from the whole.

In this manner Julius II. granted commiſſions to diſpoſe of indulgences, in order to raiſe a ſufficient ſum of money to build the magnificent cathedral of St. Peter, at Rome. Albert, a Prince of Brandenburg, who had already been Archbiſhop of Magdeburg, and Biſhop of Halberſtadt, but was now made Archbiſhop of Mentz, paid no leſs than thirty thouſand ducats, which was advanced by the Fuggers* at Augſburg, to Rome for his pallium. This Elector obtained one of theſe commiſſions from Pope Leo X, and delegated a Saxon Dominican Friar

* Theſe were very opulent merchants in the city of Augſburg, who had a houſe, and great dealings, at Antwerp. As a proof of their immenſe riches, hiſtorians relate the following anecdote. "The "Emperor Charles V. was deeply indebted to the houſe, for mo- "ney advanced to defray the expences of his expedition to Tunis. "The Emperor, paſſing through Augſburg, honoured them by "partaking

Friar, called John Tetzel, to take the care of the further diſpoſal of them in Saxony. CHAP. V.

Among the Profeſſors of the new univerſity, which Frederick ſurnamed the Wiſe, the Elector of Saxony, had founded in the year 1502 at Wittenberg, Doctor Martin Luther, whom the head of the Saxon Auguſtins had ſent thither from Erfurt, was appointed Public Profeſſor of Divinity; a man who not only poſſeſſed a clear underſtanding, but an extraordinary degree of courage; and was now in the height of vigour, in the thirty-fourth year of his age. He had been employed for ten years in the buſineſs of his own Order at Rome, and had himſelf been a witneſs to ſuch tranſactions, as at a diſtance he could ſcarcely have conceived. Furniſhed with the neceſſary knowledge of the learned languages, he had made the Bible, particularly the New Teſtament, and above all, the Epiſtles of Saint Paul, his favourite ſtudy, and was an enemy to all ſcholaſtic philoſophy. He was a man, in ſhort, whoſe whole character was open, and a perfect ſtranger to fear and reſerve.

Juſt at this period Tetzel came with his commiſſion to Zerbſt and Jüterbock, in the neighbourhood

" partaking of a public entertainment. A fire was made in the " hall with cinnamon: but what entertained his Imperial Ma" jeſty much more, and rendered the fire ſtill more coſtly, was " that one of them threw all the Emperor's bonds, before his " face, into the flames."—ANDERSON on Commerce, Vol. I. p. 364.

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hood of Wittenberg; and the people reſorted thither from that town, to purchaſe letters of indulgence. Luther, who had already ſeen ſuch letters in the confeſſional, could not refrain from warning his penitents from placing any confidence in them, and exhorted them not to believe that they could, by ſuch means as thoſe, leſſen the guilt of ſin in the ſight of God. Tetzel was ſcarcely informed of this, before he decried Luther as a heretic, and was ſo much the more vehement in praiſe of his indulgences. This induced Luther to write, what we ſhould now call a diſputation, or, according to the language of thoſe times, a theſis, on the ſubject of indulgences, in the Latin language, which he propoſed, as Profeſſor of Wittenberg, to defend publicly from the chair, on the laſt day of October, 1517. Luther here aſſerted, in ninety-five poſitions, that neither the Pope, nor any of the Clergy, but God alone, could beſtow pardon for ſins; that God required for this neither pain nor puniſhment, much leſs a contribution of money, but only a change of heart, and faith in the merits of Chriſt. The Pope at all events could but remit the puniſhments inflicted by the Church; but he had nothing in his power that could be of any ſervice after death; and if it were even poſſible that the Pope could ſhorten the duration of purgatory, that in equity he ought to do it without demanding money, but gratis, from motives of charity.

When Luther compoſed this writing, he had not the leaſt idea of commencing reformer, or occaſioning

occaſioning any general purification in the Church; he flattered himſelf that the Pope would aboliſh the abuſe of indulgences, which he had thus ventured to expoſe. As yet he had no idea of making it a public cauſe, and very conſiderately treated it as a learned diſpute, in the Latin language. Tetzel immediately declaimed againſt Luther from the pulpit. Upon this Luther likewiſe preached a ſermon upon indulgences, but without mentioning the name of his antagoniſt; only endeavouring to lay before his people profitable truths, which he did further in an explanation of the ſeven penitential pſalms, and the Lord's prayer. Theſe writings, in a ſhort time, were diſperſed, by means of the preſs, throughout all Germany, and a conſiderable part of Europe, and read with avidity and approbation. Every one was rejoiced that a man had at laſt ſummoned ſufficient reſolution to declare ſuch truths in public; and the general curioſity of the people was eager, to ſee how the matter would be conſidered at Rome.

Leo X. was perſuaded to treat the diſpute as a caſe of hereſy, which, by a ſhort proceſs, might eaſily be terminated. A Court of Delegates was for this purpoſe nominated at Rome, before which Luther was ſummoned to appear; but ſuch a ſummons of a Wittenberg Profeſſor was oppoſed by the Elector of Saxony. The affair was then ſo managed, that the Pope gave the Cardinal Cajetan, who was appointed as Legate from Rome to a Diet convoked

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convoked by Maximilian at Augſburg, a commiſſion to try Luther there. To this trial Luther repaired, but would not ſubmit to any recantation that was required of him; and in conſequence of this, the Pope's Legate pronounced ſentence againſt him. There was ſtill, however, another reſort open, as he had a right of appealing to the Pope, as the ſuperior from whom the Legate received his commiſſion.

Luther came ſafely back to Wittenberg; but on the 9th of November, 1518, a bull was thundered from the Pope, which decided every thing, which Luther had alledged as undetermined by the Church, in favour of the indulgences; ſo that it was obvious now what would be the fate of his appeal. And what reſource would Luther now have had for ſafety? for Maximilian in the laſt years of his life had ſubmitted too much to the Pontiff, and the Elector of Saxony would not have been long able to oppoſe himſelf to his authority. Luther was actually on the point of quitting Wittenberg, and going to Paris, when the news arrived of the Emperor's death, which at the ſame time enabled Frederick the Wiſe, who was now adminiſtrator of the Empire in Saxony, to afford protection to his Wittenberg Profeſſor; and thus the further developement of this hiſtory was reſerved for the following reign.

BOOK V.

Second Period of Modern Hiſtory.

ACCESSION OF CHARLES V.

1519—1558.

CHAP. I.

Capitulation at the Election of Charles V. and his Acceſſion to the Government.

Firſt capitulation propoſed by the Electoral College to the Emperor—without any remonſtrance from the other States—Eſtabliſhment of a Council of Regency, but of ſhort duration—Two proſcriptions of the Duke of Würtenberg and the Biſhop of Hildeſheim.

AT the election of Charles V. a new and important circumſtance appeared in the conſtitution of Germany. At the propoſal of Frederick, ſurnamed the Wiſe, of Saxony, the Electors agreed to make certain articles, which were drawn up for that purpoſe, conditions for Charles to ſwear to. They were in hopes that they ſhould be enabled, by this meaſure, to deſtroy the apprehenſions which might otherwiſe

otherwise arise in consequence of his great power, and, what was easily foreseen, his frequent absence in a foreign kingdom.

They had at the same time recourse to every thing which was hitherto merely dependent on custom, and converted them into written laws, in hopes of giving them more firmness for the future. This was the origin of the fundamental law of the Empire, which has been repeated ever since at every election of an Emperor or a King of the Romans, under the name of the Imperial Capitulation; and the design of which is to settle the whole form of government, by a sort of contract with the Emperor at his election.

The Elector of Mentz had already procured certain promises from several Emperors for himself; but now the whole Electoral College concluded a formal treaty, for the first time, with the newly elected Emperor, concerning his future manner of conducting the government. As nothing was inserted but what was grounded on some former custom, or else of general utility to Germany, the Electors acted, in fact, as useful agents (*negotiorum gestores*) for the whole Empire. In this consideration they merited, and met with the approbation of the whole country; although a question might certainly have arisen, whether the Electors alone, without the concurrence of the other States, had a right of making

such

ſuch a fundamental law? a queſtion which, ſince that time, has actually ariſen.

Amongſt other things it was preſcribed to Charles V. in his capitulation, to appoint a Council of Regency, (REICHSREGIMENT) to take the management of the affairs of the Empire during his abſence. This was actually eſtabliſhed at the firſt Diet, which he convoked at Worms, and continued till 1530. In this year it was put an end to; for Charles procured his brother to be elected King of the Romans, who afterwards took all the buſineſs upon himſelf, during the Emperor's abſence. Notwithſtanding this, many of the things which were at that time propoſed for the Council of Regency, at leaſt if we may draw an inference from analogy, are at preſent made a profitable uſe of.

Before the acceſſion of Charles to the throne, two wars had broke out in Germany, which immediately drew his attention, and were the occaſion of two important proſcriptions.

Duke Ulric of Würtenberg, who had been already put to the ban in the preceding reign, for the murder of a certain De Hutten, and was on bad terms with his provincial States, on account of his enormous debts, made an attack upon the Imperial city of Reutlingen, and obliged it to do him homage, becauſe the people of that place had killed one of his foreſters. For this act of oppreſſion the Swabian Aſſociation expelled him

him from his dominions. The Emperor afterwards took up the cause, and reimbursed the Association for the expences they had been at in the war. On the 5th of June, 1521, he put the Duke again to the ban, and bestowed the investiture of his Dutchy, in his division of the lands of Austria, on his brother Ferdinand. The Duke was obliged to content himself with the county of Montbeliard, and the fortification of Hohentwiel, and give up all his other dominions, without being able to prevail upon the Emperor even to hear his remonstrances, or pay any attention to the intercession of his friends.

John Bishop of Hildesheim, who was of the Ducal House of Saxe-Lauenburg, met with a similar fate. This Prince was at war with Burchard de Saldern, who was protected by the Dukes of the lines of Brunswick-Luneburg, Calenberg, and Wolfenbuttel. An engagement took place on the heath of Soltau, on the very day of the Emperor's election; and he was afterwards disobedient to the Emperor's orders: on which account, the Emperor, who was then at Ghent, put him to the ban, July 24, 1521. By the execution of this sentence, the Bishop lost almost all his country, till the affair was compromised by treaty on the 14th of May, 1523, at Quedlinburg; by which he saved the city of Hildesheim, and the bailiwicks of Peina, Steurwald, and Marienburg, under the name of the Little Bishoprick: the other territories remained in the possession of the House of Brunswick-Luneburg. This treaty was afterwards ratified

ratified by the Emperor, on the 20th of October, 1523, and by Pope Paul III. December 17, 1537. In the thirty years war, however, the House of Brunswick-Luneburg was obliged, in consequence of a treaty concluded at Goslar in 1542, to restore all the episcopal lands to Hildesheim.

CHAPTER II.

History of Martin Luther, and other Events connected with it, till the year 1525.

Progress of the commotions raised by the affair of the indulgences.—Zuinglius, Luther, Melanchton—Papal bull against Luther, and in favour of the absolutions—Doubts gradually arise in Luther's mind concerning the legality of the Papal power—Luther's exhortation to the Nobility of Germany, and appeal to a Council—Commission given to the Pope's legate to put the sentence pronounced against him, as a heretic, in execution—Debates thereon in the Diet at Worms—The Emperor's edict against Luther—Luther's concealment at Wartburg, near Eisenach—His translation of the Bible—Catechism and German hymns—Character of his writings—The irresistible approbation they met with, and general dispersion—Commotions occasioned by this affair amongst the people in several countries, who began to wish to have other preachers—which was opposed by most of the magistrates and governments—Impossibility of preserving the unity which had hitherto subsisted in the Church—owing to the essential difference of the doctrines—and the different opinions now prevailing concerning the mass, and receiving the Lord's supper in both kinds—as well as respecting the spiritual episcopal power, the monastic life, celibacy of the clergy, &c.—The necessity arising from these circumstances, of a change in the public worship and the whole state of the Church—all of which gradually took place, and with a rapid progress—particularly in the restoration of the cup, and introduction of the German language in the administration of the sacrament—as well as the manners of the Clergy, and invalidity of vows—Other undertakings proceeding from adulterated sources,

fources, fuch as the violent deftruction of the images, and the fanaticifm of the Anabaptifts—Luther's return to Wittenberg—Debates renewed at the Diet concerning the execution of the edict of Worms.

OF all the events which occurred during the reign of Charles V, none had fo univerfal and fuch an important influence on the whole conftitution of the Empire, and even on the general ftate of Europe, as the progrefs of thofe commotions which had arifen in the Church concerning the indulgences granted by the Pope.

Much about the time that Luther began to difpute concerning this abufe at Wittenberg, Ulric Zuinglius ftepped forwards to oppofe it at Zuric; and in many refpects proceeded much further than Luther had done, in expofing feveral other abufes which then prevailed in the Church. Luther himfelf had been engaged in another literary difpute with a Doctor Eck, of Ingolftadt, independent of his difpute with Tetzel. After the death of the Emperor Maximilian, he undertook to enter the learned lifts, and hold a perfonal difputation with his antagonift at Leipfic. A variety of queftions were involved in this difpute, which had had influence in his former one concerning the Pope's indulgences, and particularly tended to a clofe examination of the limits of the Papal power. He continued likewife to write differtations in the German language, and in a ftyle fuitable to every one's capacity, on particular parts of the Bible, efpecially

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especially on the Epistle to the Galatians, and applied the very essence of Christianity to every one's heart. He was now principally assisted by his colleague Philip Melanchton. The character of this reformer was quite opposite to the courage and zeal of Luther: he was, on the contrary, mild and timid; but his superior by far in learning and acuteness. Every one who was the least enlightened, and indulged a freedom of thinking, allowed that Luther and those who were united in his common cause, with respect to the doctrines he had hitherto advanced, were right.

This very naturally raised the expectation of the world to see what would be the result of his appeal from the sentence of Cardinal Cajetan to Rome. On the 15th of June, 1520, a bull was thundered by Leo X. which condemned Luther as a heretic, forbad his writings to be read, condemned them to the flames, and threatened in the same severe manner his colleagues and his sect. What an impression must this have made on Luther himself, and upon all those who had hitherto vouchsafed him their approbation! Luther was to be condemned and persecuted, merely because he exposed the traffick in indulgences, which all the world acknowledged as a scandalous abuse; and every one who favoured his opinion was to be threatened with a similar fate! To what other motive could this be attributed than a fear of losing the profits which the Papal Court, and those who were concerned in the traffick, de-

rived from the ſale of indulgences? What was more natural than that Luther, who was chiefly intereſted, ſhould make further inquiries on the ſubject; and that his ideas of the Pope's infallibility, and the legality of his authority, ſhould at laſt be entirely changed?

Ought he, who pretended to be in the place of Chriſt, the viſible head of his Church, to juſtify an abuſe which was as clear as day, and which had already been the cauſe of ſo much commotion, by ſo public a deciſion? Was there any legal foundation for the vicegerency of Chriſt, which had been hitherto pretended? Was it even neceſſary, or could it be proved from the Scriptures, that the whole Chriſtian Church ought to have a viſible head? Such thoughts as theſe muſt neceſſarily have occurred to Luther. Difficult as it was for him to abandon the prejudices in which he had been born and educated, in favour of the unity of the Church, and the neceſſity of a viſible head, prejudices which even now require the utmoſt exertion of almoſt all the Catholics to overcome; yet, if we follow Luther in his writings, and the letters which he wrote, according to the order of time, we may clearly obſerve how his mind was gradually enlightened by one thought following another, till he was at laſt convinced that the Papal power in general was not of God; and acquired courage to declare theſe and other truths, which he gradually made confeſſion of; and to defend them,

without any fear of man, both from the pulpit and the preſs.

The queſtion was no longer now concerning the ſhameful practice of trading in indulgences; but Luther began to doubt whether the power of the Pope was legal, and whether, on the contrary, he was not the very Antichriſt pointed out in the Bible? He began to diſcloſe his doubts to his confidential friends; and from doubting, he was at laſt convinced. In June, 1520, at the requeſt of ſome of the Nobility, particularly Francis de Seckingen, and Ulric De Hutten, who had firſt written to him upon the ſubject, he publiſhed an admonition to the Chriſtian Nobility of Germany, in which he firſt expreſſed his ideas of the fallacy of the Papal Hierarchy. He then made an appeal from the bull which had been thundered againſt him, to the general Council, and publiſhed ſeveral writings againſt the bull itſelf, in which he ſolemnly renounced all obedience to the Pope.

At Rome, they thought the buſineſs might ſoon be put an end to, by adopting the ſame meaſures with the Auguſtine Friar, who was declared guilty of hereſy, which they had already made an experiment of. A Legate was ſent from the Pope, to ſolicit the Elector of Saxony either to order the writings of Luther to be burned, in purſuance of the mandate contained in the bull, and put the puniſh-

punishment in execution which had been decreed against him, or else deliver him up to the disposal of the Pope. Another Legate from Rome urged the same request with the Emperor, in whose dominions in the Netherlands every thing was done as his Holiness desired.

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But the number of people who read the writings of Luther, and read them with approbation, and of those who had heard with applause his verbal discourses, or the discourses of his disciples, who had now spread themselves in almost every country from the University of Wittenberg, was so prodigious, that it was almost impossible to put the sentence of the bull in execution. The Emperor and the Elector of Saxony were at last agreed in their opinion, that as, upon application made from a spiritual tribunal to the secular government, the latter had a right to grant the condemned person a trial, Luther should be again summoned before the first Diet, which Charles convened at Worms. Disagreeable as this must have been to the Pope, and strange as it must have appeared to many, that a man who was already condemned at Rome as a heretic, should be indulged with another trial before a secular Diet; yet the order was complied with, notwithstanding the endeavours of the Pope's Legate to prevent it. The result of the trial was very unfortunate; for though Luther was only required at Worms to recant his former assertions, upon his refusing compliance, an Imperial edict was issued, on the 26th of May,

 1521,

CHAP. V. 1521, by which he was put to the ban of the Empire, and every body forbidden to afford him the least protection, or to read or disperse any of his writings.

A safe conduct, however, which Luther obtained from Charles V, was on this occasion more honourably observed than that which the Emperor Sigismund formerly granted to the venerable Huss. The same guard which conducted Luther to Worms, accompanied him back; but he was stopped on the way, by the private orders of the Elector of Saxony, and carried to Wartburg, in the neighbourhood of Eisenach, where he was concealed till the following year, and applied his time in the most profitable manner: for how could he have been better employed in such a place, than in translating the Bible into German? He published the New Testament in September 1522; and in the month of December, of the same year, the press teemed with a second edition. The books of the Old Testament were afterwards published, between the years 1523 and 1532. At first they appeared separately; till at last, in the year 1534, the world was presented with the whole Bible according to Luther's translation; and he continued to apply himself with greater diligence to the improvement of every new edition, till the year 1545.

A. C. 1522.

If Luther had been of no other service to his contemporaries, or to posterity, he merited immortal thanks

thanks alone for affording accefs to the true fource of Chriftianity, to every German who was acquainted with his native language, who had it now in his power to fee with his own eyes, and to prove and profitably apply every thing which this divine book contains for his comfort and inftruction. In particular paffages, the advancement which has fince that period been made in philological, critical, and other knowledge, may occafionally have fuggefted an improvement, and ftill more may be hoped for, perhaps, from futurity. Yet notwithftanding this, every able and impartial judge muft certainly do Luther the juftice to confefs, that his tranflation, upon the whole, in point of truth and accuracy, has never been excelled; and that, confidering the circumftances of the times in which he wrote, it is in many refpects a wonderful mafterpiece.

What Luther wrote befides, was for the moft part on fubjects taken immediately from Scripture, or elfe had reference to that divine book, which he always made his favourite ftudy, and which he took every opportunity of recommending the private and daily ufe of. His ftyle was at the fame time fo clear, fo nervous, fo acute, fo fuitable to his defign, and fo well adapted to the capacity of every clafs of readers, that his writings could not fail to be read with applaufe. He knew fo well how to fuit the capacity of the common people in particular, that fome of his writings, and principally his book of leffons and prayers, or his fmall and larger

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catechiſm, and the German hymns, which he compoſed, might be made uſe of by the ſimpleſt man, to inſtruct and edify both himſelf and family.

To this may be added, that in every thing which Luther wrote or undertook, he was actuated by no intereſted motive. On the contrary, it muſt be evident to every one, that the whole Papal ſyſtem of Hierarchy, both in its ſource at Rome, as well as with reſpect to all who undertook its defence, reſted on ſuch ſupports, that the only objects of the high and low, and of all who were at all intereſted in it, were wealth, honour, and convenience; while Luther could only expect the reverſe. For this reaſon it was ſoon diſcovered in his writings, that it was not hypocriſy, when he aſſerted, that the work he undertook was a duty which he owed both to God and truth; and that nothing but the idea, that he ought in ſuch caſes to be obedient to God rather than to man, had inſpired him with courage and firmneſs.

From theſe conſiderations we may eaſily conceive, that the writings of Luther, and his verbal diſcourſes, as well as thoſe of his diſciples and followers, ſoon met with ſo general a reception, that there was ſcarcely a country, a town, or even a village of any conſequence, to be found in Germany, after the year 1521, where the people were not eager to ſee or hear him. There was certainly no neceſſity for any order from the government, or encouragement either for the common people, or even for the learned,

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and people of rank, to read Luther's writings, or hear difcourfes which were delivered according to his doctrine. Nothing but coercive means were able to deter the people from them. Where the magiftracy left the fubjects to their own conviction, the general voice was foon unanimoufly in favour of Luther. Moft of the magiftrates, either through fear of the Emperor or the Pope, or from other motives, could fcarcely be perfuaded to leave their fubjects to themfelves. Some were not only entirely prohibited from reading Luther's writings, but even met with oppofition when they requefted toleration for the preachers of his doctrines; and in feveral inftances, the Government had even recourfe to violent methods of compulfion.

On the other fide, many were perfuaded that this was a cafe in which every one ought to be guided by his own confcience; and that in a matter of importance, which concerned the relation between God and man, God was certainly to be more attended to than man. In many towns, the inhabitants reforted to places in the neighbourhood, to hear the word of God, as they called it, preached in its genuine purity. Many governments were under the neceffity of allowing their fubjects to have fuch preachers. So far was it from the truth, that this great revolution in the Church, which now continually became more and more important, owed its origin to the German Princes, who, it was pretended, only changed the government of the Church in their countries in order

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order to profit from the ſuppreſſed convents, and procure greater authority in eccleſiaſtical affairs. According to the true courſe of the hiſtory, the reformation which was now actually produced, after ſo many fruitleſs Councils, was not the arbitrary act of a ſovereign, or of any particular government, but the earneſt deſire, and at the inſtigation of the ſubjects themſelves. It did not therefore originate among the higher claſs of people, and deſcend to the lower; but amongſt the loweſt orders, and ſpread its influence till it comprehended the Sovereigns themſelves. The repreſentation therefore which many have made, that the Elector of Saxony, the Landgrave of Heſſe, and others who followed their example, were only guided by their intereſt, and found their advantage in adopting the doctrines of Luther, and introducing them in their dominions, and that the Catholic Sovereigns of Proteſtant countries had equally a right to introduce the Catholic religion again, and that the ſame right is ſtill exiſting, is totally falſe.—No! It was neither ſovereigns nor governments which took the lead in the revolution in the Church, or who eſtabliſhed it by any acts of authority: it was the ſubjects alone, whoſe views were changed, and who wiſhed, according to the ſentiments they then entertained, to be ſet at liberty from the yoke which had ſo long oppreſſed them, and to have their religious worſhip regulated according to their own conviction. Where the governments and ſovereigns of the country gratified the wiſhes of the people, matters were preſently ſettled; and

and obſtacles only aroſe, where the governments would not comply.

The ſermons and writings certainly did not now continue merely to contain theoretical or problematical queſtions of divinity, but ſuch a difference diſcovered itſelf in the moſt eſſential doctrines, and at the ſame time in the whole conſtitution of the Church, between what had hitherto prevailed, and what was now adopted, that it was impoſſible for both parties to continue any longer in the ſame communion.

Luther advanced, almoſt in the very words of the Bible, particularly of the Apoſtle Paul, that it was not our own righteouſneſs, but the all-prevailing merits of Chriſt, which could juſtify and ſave us before God; that the real ground of our ſalvation was to be ſought for, therefore, not by our own righteouſneſs, but by faith in the merits of Chriſt. He did not mean, that it was ſufficient to have merely an hiſtorical faith, or ſuch as that of the devils, who believe and tremble; or to profeſs to believe with the mouth, without proving it by works; but to have a lively and active faith, ſhowing itſelf by the love and genuine practice of virtue. But this was a doctrine which deviated ſo eſſentially from the common doctrine of the Catholic Church, that a man could not rely upon his own good works for juſtification before God, nor claim eternal ſalvation for any merit of his

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his own. Much leſs were they now convinced, that after death ſuch a middle ſtate, between ſalvation and perdition, which was repreſented under the name of Purgatory, could be proved from the Bible, or that any prayers, or ſacrifice of the living, could avail for the good of departed ſouls. Neither was it a part of their creed now, that the invocation of the aid and ſupport, or the interceſſion of either ſaints or angels, could be of any ſervice to reconcile a ſinner to God, to whom alone adoration was due.

Theſe alone were already eſſential articles of religion, which had ſuch influence on the conduct of every human being, that thoſe who differed in opinion, could not poſſibly ſubſcribe to the ſame confeſſion of faith any longer. Many other things likewiſe ſtood in connexion with theſe, which muſt have appeared of the utmoſt importance to every Chriſtian who reflected on the ſubject; ſince it could not be denied that all the conſequences of alms, pious inſtitutions, pilgrimages, eccleſiaſtical penance, letters of indulgence, maſſes for ſouls, &c. which were the reſult of the above-mentioned doctrines, expoſed in their true nakedneſs every thing that had hitherto ſerved as the greateſt ſupport of the predominant weight of the Eccleſiaſtical Eſtate, and promoted its intereſt, as well as the intereſt of all the Papal Hierarchy.

Another thing which began now to be conſidered in a different light, was the Maſs, as it had been hitherto

hitherto uſed in the public ſervice of the Church. It was acknowledged from the words of the New Teſtament, that Chriſt had inſtituted the adminiſtration of bread and wine, in commemoration of his death; but, as by the ſufferings which he underwent on the croſs he gave up his life, as an offering for mankind, and by that offering put an end to the ſacrifices inſtituted as types in the Old Teſtament, the repreſentation of the Lord's Supper as a ſacrifice offered every time, and the doctrine of the Hoſt being every time actually converted into the genuine body of Chriſt, or the doctrine of Tranſubſtantiation, as it is called, and laſtly, the refuſal of the cup, or uſe of the wine in communion, were conſidered as abuſes crept into the Church. Where a body of people were of this opinion, and neither the clergy nor the magiſtrates would conſent to another form of adminiſtering the ſacrament inſtead of the maſs, the reſtoration of the cup, and introduction of the German language inſtead of the Latin, it was abſolutely impoſſible to preſerve the communion of the Church.

That every church, or the churches of a particular country, ſhould have an Archbiſhop or Biſhop, to inſpect the eccleſiaſtical diſcipline, was never objected to: but that the Biſhops ſhould be Sovereigns, and poſſeſs whole countries as their property; that they ſhould have power over the conſcience, or have a right to dictate or command what ſhould

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be an object of faith, and what rejected, was no longer supportable; much less that all the Archbishops and Bishops should be subject to the supreme power of the Bishop of Rome; and that, on the other hand, all the clergy should be exempted from temporal power, and be entitled to usurp those prerogatives which only belonged to the secular government. It was acknowledged likewise now, that a monastic life, and the celibacy of the clergy, tended only to strengthen the chain which connected the whole system of the Hierarchy, and encourage ignorance and superstition.

It was not therefore merely a single point or two, or things which were wholly accidental or matters of indifference, but a number of the most weighty objects, which had the most essential influence on the whole system of religion, and the institution both of the common public worship, and the whole state of the Church; of which, different opinions were formed from those which had been hitherto generally entertained, and which the Pope and Clergy wished to prevail in future. In this respect such a change now took place in religion and the whole ecclesiastical constitution, that as far as any thing was suffered to remain in its former state, it might certainly be denominated the Old Church, and where it was found necessary to make any alration, the New one. Although in fact the question was only, Whether Christianity should be restored to its original purity, as it was at the time of Christ

Christ and his Apostles, or be left with the additions which had been made in later times, and which in general derived their origin from the impurest sources. In this consideration the Catholic religion undoubtedly contained many innovations, which perfectly distinguished it from the ancient genuine evangelical religion, which was intended now to be restored.

All these things were certainly not brought to light at once. It required perseverance, and the joint inquiries of a variety of people, gradually to disclose one truth after the other. How many prejudices, deeply rooted by education, authority, the age, and various other circumstances, were first to be overcome! What difficulties occurred, sometimes through the interference of the papal and episcopal power, sometimes through the dreadful combination of whole religious orders, sometimes through the opposition of the secular government, and sometimes family connexions, friendships, and even the prospect of provision for life, &c.! So that it was absolutely a matter of astonishment, that in the course of a few years, which elapsed before and after 1521, the principles of the Protestant religion should be so universally diffused. When we consider this wonderful progress, it is scarcely possible to deny the irresistible power of the truth.

The affair now soon came into such a situation, that it was not enough for such truths to be propagated

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pagated from the preſs, in the ſchools, and from the pulpit, and to be received with applauſe; but the grand object now was their full eſtabliſhment, by making the neceſſary alterations in the ſervice, and in the whole ſtate of the Church. At laſt a certain boundary was fixed upon for theſe alterations: and as in this world no perfection can be expected in any human undertaking, ſo here likewiſe human imperfections were unavoidable; and yet, notwithſtanding this, there are veſtiges ſufficient to raiſe our wonder at the ways of Divine Providence, which alone knows how to make defects and imperfections turn out in the end, and in a general view, often for the beſt.

Towards the end of the year 1519 Luther had modeſtly expreſſed a wiſh in one of his ſermons, that the ſacrament of the Lord's Supper might be adminiſtered in both kinds. During his abſence in 1521, the Auguſtins at Wittenberg ventured to communicate both the bread and wine, and made uſe of the German language in the maſs, inſtead of the uſual forms in Latin.

In the ſame year, Bartholomew Bernhardi, Provoſt of the monaſtery of Kemberg, near Wittenberg, advanced ſtill further, and entered into the matrimonial ſtate, which met with Luther's approbation. It was at firſt a matter of doubt with Luther, whether monks and others, who had voluntarily taken a vow of celibacy, could marry; till at laſt he

he was convinced, upon a closer inquiry, that all such vows were of no validity. Luther, though he was not deficient in courage, or spirit of enterprise, was in general exceedingly cautious in adopting measures which might have the appearance of making any alteration by violence, or without a previous conviction of its necessity. He was persuaded, that when the world was acquainted with the truth, many alterations would take place of themselves, or be regularly effected, with the approbation of every party. This opinion corresponded with that of the Elector Frederick, surnamed the Wise, who generally continued passive, and gave the whole business his tacit approbation, though he could never be prevailed upon to adopt any measures which might cause a public commotion.

This was very different from the sentiments of several others, who were ambitious of taking an active part in the commotions occasioned by Luther's reformation, and sharing the fame which he had already so universally acquired. Some were in hopes even of making their own names as renowned as Luther's; and even that his fame would be exceeded and eclipsed by the lustre of theirs. Thus Luther's colleague, Doctor Andrew Carlstadt, who continued at Wittenberg during his confinement at Wartburg, incited the burghers and students to obey their impetuous leader, to destroy the images in the churches, and change the whole of the public service by violent means. In other places likewise,

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Luther, apprehenſive of the conſequences which were to be expected from theſe commotions, unexpectedly made his appearance again at Wittenberg, on the 15th of March, 1522. He continued preaching ſermon after ſermon for eight days ſucceſſively, till he had quieted the tumult, and then proceeded to act according to thoſe principles which he himſelf profeſſed. In the year 1523 he wrote a treatiſe on the order of public ſervice in the Church, reſpecting the mode of preaching and ſinging. In conſequence of this, and the agreement of the Government and ſubjects, various alterations were made in many places in the public ſervice, with the utmoſt order and regularity.

On the other ſide, however, a more zealous attempt was made to execute the edict iſſued againſt Luther at Worms. But the impoſſibility of putting an edict in execution which was oppoſed by whole countries, and perhaps by the greateſt part of Germany, ſoon became generally obvious, eſpecially as Pope Adrian VI. had

had ingenuoufly confeffed, by his Legate to the Diet, that the whole Church, both in its head and members, abfolutely ftood in need of a thorough reformation. This circumftance induced many of the States, who were at that time uninfluenced by Luther, to caufe a hundred frefh complaints of oppref-fions in Germany, to be laid before the Pope; but his Holinefs, who was the laft of his kind, unfortunately did not live long afterwards, and the complaints were very willingly left at Rome as they were. Under thefe circumftances nothing further could be accomplifhed at the Diet convened at Nurenberg during the life of Adrian, in 1522, nor at the fucceeding Diet in 1524, than a refolution to enforce the edict of Worms, as much as poffible; but the poffibility after that period continually decreafed. CHAP. II.

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CHAPTER III.

Religious Occurrences of the Year 1525.

Meaſures adopted to eſtabliſh a new eccleſiaſtical government, as the Sovereigns and their ſubjects were now agreed in their opinion, to renounce their obedience to the Pope, and the Biſhops who continued to adhere to him—Particularly in Heſſe and Saxony, as well as in other States, and even foreign countries—In many Imperial cities in the Netherlands and Swiſſerland—The purification of the Church in the cities was not required at firſt by the magiſtracy, ſo much as by the inhabitants—In ſome places the burghers were divided in their ſentiments—Frequent inſtances of a mixed perſuaſion in whole countries—No rule generally admitted in the new eccleſiaſtical government, except the Bible—One State profited from the example of another, though the ground-work was ſettled according to the particular circumſtances of each—An univerſal change in the ſtate of the monaſteries and nunneries—The invalidity of monaſtic vows univerſally acknowledged—Convents frequently converted into hoſpitals, or other charitable foundations, or the revenues applied to increaſe the income of the parochial clergy, and the maintenance of ſchools, and univerſities—Ground laid for the ſecularization of entire countries in the acknowledged invalidity of the vows taken by religious orders in the grand Commandery of the Teutonic Order in Pruſſia—This event occaſions the firſt offenſive league being formed againſt the Proteſtants at Deſſau, and the firſt Proteſtant defenſive league at Torgau.

IT was particularly fortunate for the reformation that John, ſurnamed the Steadfaſt, who ſucceeded Frederick the Wiſe in the Electorate of Saxony, acted

acted with more resolution than his predecessor, and that the Landgrave, Philip of Hesse, publicly declared himself in favour of Luther. In both these countries it was the general wish of the subjects, or at least of by far the greatest part of them, that an alteration might take place in the ecclesiastical government. This was not to be expected from the Pope, the Archbishops or Bishops, who had been hitherto the spiritual superiors. There was no hope of any thing being done properly, with any order, or with permanent success, without the concurrence of the Government. But as the Sovereigns of the country, the Provincial States, and the subjects, were now of the same opinion, what could restrain them from renouncing their obedience to the Pope, as well as to the remaining Archbishops and Bishops who adhered to him, with whom they could not in conscience agree any longer, and forming a new ecclesiastical government for themselves?

In every country where the Sovereign and subjects made the same confession of religion, every thing was naturally conducted under the direction and inspection of the territorial Lord. In many things, where it had been formerly the custom to obey the commands only of the Pope and Bishops, there was no difficulty in submitting now to the authority of the Sovereign. In this respect, a Protestant Sovereign, with the consent of his own provincial States and subjects, could acquire the prerogatives which

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which were before peculiar to the Pope and Biſhops, as far as there was no reſtraint of conſcience, and thoſe prerogatives had been originally illegally uſurped from the ſupreme ſecular power. The Proteſtant Princes, however, were very far from aſſuming in this buſineſs an abſolute unlimited power over their ſubjects. They took no ſtep without the concurrence of learned and reſpectable divines, and the expreſs or tacit approbation of their reſpective States and ſubjects.

Thus the Landgrave of Heſſe held a Synod, to deliberate how the government of the Church in Heſſe, could be regulated in a manner moſt conformable to the contents of the Bible. The Landgrave himſelf, it is true, was preſent, but did not dictate any thing, and only gave his approbation to the decrees of the Synod. The members of this council did not iſſue their decrees as orders, but as the reſult of their deliberations, which they thought moſt ſuitable to the word of God, without requiring them to be conſidered as unalterable.

In Saxony, the Elector John, ſoon after his acceſſion to the government, avowed his approbation of the alterations which had aleady taken place, and ſuffered miniſters of the Proteſtant perſuaſion to be ordained by his own ſovereign authority. He aboliſhed the maſs likewiſe, and ordered the German language to be made uſe of in the adminiſtration of the ſacrament. He eſtabliſhed new eccle-

ecclefiaftical ordinances, and a Vifitation, compofed of feveral fpiritual and fecular Counfellors, to take care that able minifters and fchoolmafters were appointed throughout his country, and that the public worfhip was regularly performed. At laft a particular Confiftory was eftablifhed of ecclefiaftical and fecular Counfellors, to whom all affairs of the Church were referred, which, amongft the Catholics, had formerly been fubject to the power of the Bifhops or the Pope.

The fame meafures were gradually adopted in feveral other countries of Germany; and foon afterwards Denmark and Sweden were the firft examples of whole kingdoms thus fetting themfelves at liberty from the Papal yoke, and eftablifhing a religion and ecclefiaftical government, in a manner much more fuitable to the rules prefcribed in the Holy Scriptures.

Similar alterations took place in places where there was no monarchical form of government, or territorial Lord, but even where the form of government was republican, as in the Imperial cities in particular, or fuch towns which, though they acknowledged a Sovereign over them, were almoft wholly in poffeffion of their freedom, and had the direction of the government themfelves. Even the provinces and towns in the Netherlands, and the whole of Swifferland, might be included, as their connexion with Germany was not at that time

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finally diſſolved, at leaſt not by any public act of the Empire.

In all theſe places the general queſtion was, in what relation the magiſtracy and people ſtood to each other? and whether the latter were of the ſame opinion among themſelves? If the magiſtracy alone had been attached to the Proteſtant religion, and determined to make the people adopt the ſame conſeſſion by compulſatory methods, their attempts would certainly have been fruitleſs. This, however, was not any where the caſe. On the contrary, in many places where the inhabitants wiſhed for a reformation in the Church, the magiſtrates themſelves oppoſed it. The queſtion then was, whether the citizens could find means to bring the magiſtrates to another perſuaſion? Where this was not practicable, the Catholic worſhip continued, eſpecially if the magiſtrates met with ſupport from a Biſhop, a Chapter, or a convent. Where the magiſtrates of a town, or the citizens, were not agreed amongſt themſelves, and one party favoured the reformation, and another oppoſed it, a mixed ſtate aroſe, which was the caſe in ſeveral places, where one religious party was, if not entirely, yet nearly equal to the other; or elſe if one party was more numerous, or predominated over the other, they ſaw it neceſſary to tolerate the other with more or leſs reſtriction.

This was in ſome meaſure the caſe with whole countries, which were otherwiſe in cloſe connexion, as

as in Swifferland* and in the Netherlands, where fome cantons or provinces continued to profefs the Catholic religion, and others embraced the reformation. In foreign countries likewife, it frequently happened that a great part of the inhabitants changed their opinions; as in France, for inftance, where feveral millions embraced the Proteftant faith, though the reigning family and the greater part of the nation continued Catholics. It was happy for the Proteftant religion, when whole kingdoms, countries, and towns, unanimoufly confeffed it; and then, with the mutual confent of the government or magiftrates and fubjects, adopted fuch meafures as were moft fuitable to the circumftances of every different country.

In this manner the Proteftant form of ecclefiaftical government was gradually eftablifhed in feveral States. It was every where agreed to conform only to the dictates of the Bible, and particularly to the New Teftament; and fuffer no traditions, nor any human authority, to avail in matters of faith. It was ufual likewife for one country to follow the example of another, and make regulations fimilar to thofe which had already been fuccefsfully adopted; with the natural hope, that in fimilar circumftances they might expect the fame effects. In this manner, in other cafes likewife, fuch as bufinefs of exchange, infurance,

* Of the Cantons of Swifferland, fix are Proteftant, and feven Catholic. In the United Provinces, the Catholics at prefent are computed to form one third of the inhabitants.

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insurance, &c. many nations of Europe, and States of Germany, which are otherwise totally independent of each other, have established similar laws; and one has always endeavoured to profit from the improvements of the other, without restraining itself from deviating from such regulations, where it appears necessary, according to the particular circumstances of the different kingdoms or countries. As little as all Europe, or even all Germany, acknowledges on this account one law concerning bills of exchange or insurance, so little have all the Protestant States the same ecclesiastical government. In Denmark, many things were established different from Sweden; and in England, different from both. Still more different were the regulations in Swisserland, and in the Netherlands; and thus likewise in Germany, every principality, every county, and every Imperial town, made such arrangements in their ecclesiastical government, as appeared best to themselves.

A. C. 1530. Certain articles indeed were agreed upon among the Protestant States of Germany, at Smalkalde; but these were very far from encroaching on any regulations which the private circumstances of any particular State might require. Every territory, and every Imperial town, therefore, reserved the full liberty of determining for itself: and what purpose would have been answered, supposing a uniform ecclesiastical government had been universally established, since Christ and his Apostles themselves have given no certain rules upon the subject,

but

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but left every church or body of people to their own natural liberty? The experience of many hundred years had sufficiently proved how hazardous it was to insist upon the doctrine, that the unity of the Church consisted in the exterior institutions of it being regulated according to any arbitrary prescription, or any human power whatsoever, whether this power was in the hands of one general head, or exercised by a body of people assembled together. It was sufficient, where the government and subjects of a State were united in their opinion concerning the necessary regulations to preserve the uniformity of public worship, and adopted the Bible, in which the real tokens of religious union are only to be found, as their rule of faith. It was certainly agreeable, and in many respects useful, for all the churches of a particular country or town to have a certain uniformity introduced in the public service, such as the use of the same book of Psalms, the same Liturgy, &c. But when the question arose, whether several countries, or even all the Protestant States, should be subject in this point to the same general rules, there was good reason to suppose, that the advantages attending such a uniformity would be in danger of being exceeded by the disadvantages which might be apprehended in the end from the adoption of them, however judiciously they might be formed.

For this reason, neither Papacy nor Monachism were consistent with the system of Church-government adopted

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adopted by the Proteſtants; becauſe a principle was connected with both, that no State could be ſecure from the interpoſition of a foreign ſuperior power, in matters which immediately concerned, or had a near or even diſtant relation to religion. Convents therefore, either of monks or nuns, could not be permitted any longer in thoſe countries, or Imperial cities, which adopted the Proteſtant perſuaſion. There could not be any objection to the monaſteries, &c. being converted into charitable foundations for the ſupport of the infirm, and the relief of ſuch perſons as were otherwiſe unprovided for, without depending in future upon any foreign power. But it was not neceſſary for this purpoſe that the convents ſhould be either ſo numerous or wealthy as they actually were. Thoſe, however, which were not thus appropriated, might afford a better proviſion for the churches and ſchools in the towns and villages, which might even be more conſiſtent with the real deſign of their founders; and beſides this, it was daily more evident, that the worth attributed to the pretended ſanctity and meritoriouſneſs of a monaſtic life, with reſpect to eternal ſalvation, was totally groundleſs.

As to the monaſtic vows, and particularly that of perpetual celibacy, it was at laſt diſcovered, that they could not poſſibly be pleaſing to God, and therefore could not have any legal force; eſpecially as they were not only in a great meaſure taken by compulſion, and merely to gratify parents and relations,

rather

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rather than from choice and conviction; but becauſe every vow of ſuch a nature anticipated the way of Providence, from whoſe conduct every one may reaſonably expect ſufficient opportunities of determining whether he ſhall marry or continue in a ſtate of celibacy: not to mention the regret, the deſpair, and who knows what ſchemes of evaſion, may be the conſequences with perſons reſtrained by ſuch vows from matrimony. On the other ſide, what an injury was done to ſociety by the decreaſe of population, and by the Church and State being deprived of the preſent and future public labours of thoſe who might otherwiſe become their moſt active and uſeful members. The Proteſtants, convinced by ſuch arguments as theſe, gradually began to aſſert the total invalidity of monaſtic vows; and as the Pope had hitherto reſerved to himſelf the right of granting diſpenſations to thoſe who had taken them, every government thought itſelf entitled to declare, that the renunciation of monaſtic vows ſhould be left now to the option of every one as a matter of conſcience.

Who therefore could blame the Landgrave Philip, for opening the doors of the convents throughout his territory, and offering liberty to all the monks and nuns who choſe to quit their cells; for employing ſuch as were able and willing, by giving ſome of them profitable offices, as ſuitable as poſſible to their reſpective circumſtances; granting penſions for life to others, and eſtabliſhing inſtitutions of another kind?

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The doctrine of the invalidity of vows, which was now advanced, occaſioned an event which, as it was the firſt of its kind, and there was reaſon to apprehend that its conſequences would be of the moſt important nature, cauſed a conſiderable alarm. In
A. C. 1525. the year 1525, Albert Margrave of Brandenburg, who was at that time Grand Maſter of the Teutonic Order, and involved in a war with Poland, made public confeſſion of the Proteſtant faith, and concluded a peace with King Sigiſmund, his mother's brother,

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brother, upon condition that his vow of celibacy, as well as his connexion with the Teutonic Order, ſhould be totally diſſolved, and that half of Pruſſia ſhould from that period be converted into a ſecular Dutchy, in favour of him and his poſterity, and be held as a fief of the Crown of Poland: ſoon after which he actually married a Daniſh Princeſs.

As this was the firſt inſtance of a real ſecularization, there was certainly every reaſon to apprehend that it would not long remain the only one: and what would have been the conſequences, if in the courſe of time, one or more of the Archbiſhops of Mentz, Treves, Cologne, Magdeburg, Salzburg, Bremen, or the Biſhops, had changed their religious ſentiments, taken it into their heads to marry, and change their Archbiſhopricks or Biſhopricks into ſecular Principalities for the good of their poſterity! It is eaſy to be conceived, that not only the Pope, and the whole Catholic Hierarchy, muſt have trembled merely at the idea of the poſſibility of ſuch an event, but that all the Canons likewiſe, who were in hopes of becoming either Archbiſhops or Biſhops, could not have viewed ſuch an event as this with indifference, any more than the Nobility, for whom this was the only way which was open for them to obtain the Princely dignity; and even the families of the Imperial States, who had hitherto found ſuch plentiful means of providing for their younger ſons by eccleſiaſtical preferment, and elective Principalities.

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No wonder therefore, that heaven and earth were moved to prevent an innovation big with such important consequences! Thus so early as the year 1525, some of the Princes who were dissatisfied with the reformation, particularly the Electors of Mentz and Brandenburg, and Duke Henry the younger of Brunswick-Wolfenbuttel, entered into a league at Dessau—a league which at best could only in this respect be justified, if the object of it was confined to this, that no member of the league should be compelled to admit any innovation in his own territory against his will. But it could not possibly be justified, if the object of combination was to make war upon other States of the Empire, who suffered the word of God to be preached in their country in greater purity. Had France and Spain any right to form a league, to make war upon Denmark and Sweden, merely on account of the revolutions which had taken place in those kingdoms, in their ecclesiastical government? If not; neither had the Princes of the Germanic Empire more right to trouble themselves concerning what passed in each other's territory.

It was a real offensive league, therefore, which began in Germany on the part of the Catholics; a league which must have been the more alarming to the Protestant States of those times, as the Catholics were superior both in number and in power: and it might easily be foreseen, that they would have the whole power of the Emperor in their favour, and that they would meet with further support from every quarter,

quarter, at the inſtigation of the Pope, in caſes of neceſſity. Nothing remained for the Proteſtant States, but that they ſhould either reſign their own liberty of conſcience, and that of their ſubjects, to the mercy of a violent and illegal attack, or elſe place their confidence in God, and defend themſelves by force of arms to the utmoſt of their power. With this reſolution, the Elector of Saxony and the Landgrave of Heſſe concluded their firſt defenſive league in the year 1525 at Torgau; becauſe they obſerved that their enemies had formed a league, and expended a prodigious ſum of money, to preſerve the ancient abuſes in the Church, and invade the territories of thoſe, who ſuffered the preaching of the word of God. They aſſociated from no motives of perſonal enmity; but only to protect their ſubjects from an unequitable war, and ſtand by each other in caſe they ſhould be expoſed to any aſſault on account of their religion, or any other cauſe connected with it. This aſſociation was afterwards joined at Magdeburg by the Dukes of Brunſwick-Luneburg and Mecklenburg, the Prince of Anhalt, the Count of Mansfeld, and the city of Magdeburg.

CHAPTER IV.

Tranſactions of the Diet, and other Events, till the Confeſſion of Augſburg.

1526—1530.

A decree of the Empire paſſed during the abſence of Charles V. in 1526, which allowed liberty of conſcience to the States in matters of religion—by which the reformation was further promoted—A new offenſive league, which was divulged by Otho de Pack, occaſions Philip Landgrave of Heſſe to take the field—A decree of the Empire in 1529, more unfavourable to the reformation—which was the firſt cauſe of diſputing the validity of a majority of votes in matters of religion—and a proteſt againſt the decree, whence originated the name of PROTESTANT—A freſh ſummons for a Diet, iſſued afterwards by the Emperor, gives new hopes—as the Proteſtants thought themſelves called upon to deliver a public confeſſion of their faith—which they did in the Confeſſion of Augſburg—Among other things it was evident, that in the whole of the reformation, no compulſion was made uſe of, but that it was left to every man's conviction—A diſſenſion diſcovers itſelf already, concerning the doctrine of the Lord's ſupper, between Luther and Zuinglius.

DURING all theſe tranſactions in Germany, after the Diet at Worms, the Emperor had always been abſent, and engaged in a war with France. Though he was ſo far ſucceſsful, that he obliged King Francis, who was his priſoner, to ſign a peace at Madrid, February 17, 1526, the terms of which were

were very ſevere, yet he ſoon experienced that the peace was far from being permanent; and lived to ſee his brother Ferdinand, who by the death of Lewis King of Hungary and Bohemia, at the battle of Mohacz in 1526, ſucceeded to the two kingdoms of Hungary and Bohemia, engaged in an extenſive war with John de Zips, and with the Turks.

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In theſe circumſtances, during the abſence of the Emperor in the year 1526, a Diet was convened at Spire, where it was decreed, that every State of the Empire ſhould abide by the edict of Worms, as he expected to anſwer for his conduct before God and the Emperor. By this, in fact, the Imperial States were very juſtly allowed to think, in all matters which concerned religion, as their own conſciences directed them. The reformation, therefore, under the protection of this decree of the Empire, not only gained an advantage in thoſe countries where it was already eſtabliſhed, but in many reſpects made further progreſs in places where it was newly introduced; as in the Principalities of Brandenburg-Anſpach and Baireuth, the Counties of Montbeliard, Diepholtz, and Hanau, and the Cities of Goſlar, Hamburg, Gottingen, and Brunſwick.

One of the moſt violent oppoſers of the reformation was Duke George of Saxony, who was father-in-law to the Landgrave Philip, and reſided at Dreſden. This Prince, with ſeveral others, in May 1527, had congratulated Ferdinand at Breſlau on his acceſſion to the Crowns of Hungary and Bohemia.

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This opportunity is ſaid to have been ſeized for forming a new offenſive league againſt the Proteſtant States, and ſtopping the further progreſs of the reformation; and if we may judge by the zeal which thoſe Princes, who were aſſembled at Breſlau, ſhowed for the Catholic religion, and the principle of the Church of Rome, which allowed them, if it did not make it their duty, to perſecute heretics and apoſtates by every poſſible act of violence, it is not at all improbable. Otho de Pack, a counſellor in the ſervice of Duke George at Dreſden, firſt ſent private intelligence of this league to Philip Landgrave of Heſſe; and even gave him a copy of it, ſealed with Duke George's ring. The Landgrave gave himſelf up for loſt, if he waited for the attack which was then in agitation. He reſolved therefore to commence hoſtilities; and taking the field immediately, marched his army towards Franconia. At the ſame time he publicly declared, that the intelligence he had received from Otho de Pack was the cauſe of his undertaking. The whole account of the league was now given out, by thoſe who were concerned in it, as a forgery. Upon this, Philip withdrew his forces, though Mentz, Wurtzburg, and Bamberg, were obliged to pay him a hundred thouſand florins, to indemnify him for the expences he had been at in his military preparations.

This event was, no doubt, not without its influence on the tranſactions of the Diet, which was held again at Spire, during the Emperor's abſence, in 1529. The

The Emperor immediately procured a motion to be made, that, as the clause of the last Imperial decree of the year 1526, "as every one expected to answer "for his conduct before God," had been the occasion of much abuse, this decree should be totally annulled, and new measures adopted respecting the religious differences. In consequence of this, a decree was passed by a deputation from the Empire, and afterwards by the general Diet, though only by a majority of voices, that "where the edict of Worms "had been hitherto observed, no one should in future receive the doctrines of Luther." But how was it possible for any law to set bounds to the internal conviction of the truth? "That where Lu-"theranism was already introduced, and could not "be suppressed without increasing the disturbances, "they should desist from all further innovations, and "particularly from abolishing the mass." But how was this to be reconciled with the liberty of every State where the government and subjects were united, in a new institution, which only concerned themselves, and in making such arrangements as best suited their convenience?

This decree of the Empire very naturally occasioned a question on the part of the Protestant States, "Whether it could be required of them, in matters "which concerned the salvation of their own souls "and those of their subjects, to submit to the plurality "of voices of a deputation from the Empire, or even "of a general Diet?" To me it appears, that no

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ſupreme power in the world is entitled to aſſume any right over their ſubjects, to dictate what doctrines of religion they ſhall embrace or reject. The bond of civil ſociety, which, where it is capable of uſing compulſive means, has only the public welfare for its object, cannot legally extend ſo far: much leſs could a majority of voices, according to the relation in which the States of the Germanic Empire, with reſpect to their right of voting at the Diet, ſtand in to each other, as ſo many actual Sovereigns of particular States, preſcribe laws in ſuch points as theſe to the others.

In this ſituation of affairs, there was no alternative for the Proteſtant States but to proteſt againſt the decree of the Empire, which had been paſſed by a majority of voices, and which was ſo prejudicial to their intereſts. Beſides John the Elector of Saxony, George Margrave of Brandenburg-Anſpach, Erneſt and Francis Dukes of Brunſwick-Luneburg, Philip Landgrave of Heſſe, and Wolfgang Prince of Anhalt, there were fourteen Imperial cities (*a*) which ſigned the Proteſt; from which circumſtance, the Lutherans, owing to the expreſſion being firſt made uſe of by the perſon who was then the Legate from Rome, acquired the name of PROTESTANTS in the year 1544. A burgomaſter of Memmingen, a ſecretary of Anſpach, and a ſyndic of Nurenberg, were ſent

(*a*) The fourteen cities were, Straſburg, Nurenberg, Ulm, Conſtance, Reutlingen, Windſheim, Meinengen, Lindau, Kempter, Heilbroun, Iſna, Weiſſenburg, Nordlingen, and St. Gal.

ſent with the proteſt to meet the Emperor in Italy, where he was already arrived in his way to Germany, though to be ſure it might have been rather more conſiſtent with decorum to have appointed perſons of rank to execute ſuch a commiſſion. Theſe Deputies did not meet with ſo cordial a reception as they wiſhed for, but were immediately ſeized, and committed to priſon. CHAP. IV.

The orders which the Emperor iſſued from Bologna, on the 21ſt of January, 1530, for the convocation of a Diet at Augſburg, inſpired the Proteſtants with a freſh degree of courage, as he declared in the moſt gracious terms, that "it was "his intention to attend in perſon, to hear every "one's ſentiments of religion in love and amity, "and uſe his utmoſt diligence to reconcile the "different opinions." The Proteſtant States conſidered this a challenge from the Emperor to lay their confeſſion of faith before him; and they the more willingly obeyed the hint, as they had already experienced that there was ſcarcely a hereſy exiſting which had not been laid to their charge. In foreign countries in particular, the Proteſtants had been deſcribed as a ſet of people, who neither believed in the exiſtence of a God, or that there was a Heaven or a Hell. This opportunity, therefore, was exactly what they wiſhed for; that by delivering a confeſſion of their faith in as public a manner as poſſible, not only the Emperor and the Empire, but the whole world, might have a better

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knowledge, and be able to form a more accurate judgment, of the real contents of their doctrines. The Protestants had particular reasons for convincing mankind, that they perfectly adhered to all the doctrines of Christianity founded in the Bible, and which the Catholics themselves professed, that they might no longer, as had hitherto been frequently the case, be confounded with other sects, or be considered either as uncatholic or unchristian. But then they were likewise under the necessity of acknowledging in what articles, and upon what grounds, they thought themselves obliged to renounce the former doctrines, and principles of the Roman-Catholic Church; and declaring the reasons why they could not continue any longer in that communion.

With this view Melanchton, in conjunction with Luther and other divines, drew up twenty-one articles of faith *, comprehending almost the whole system of Christianity; and seven articles of dissension, in which the abuses that were remedied were enumerated; such as the two kinds of sacrament, the marriage of the priests, the mass, confession, distinction of food, monastic vows, and episcopal authority. All this was so concise, so pertinent, determined, clear, and so conformable to the immediate contents of the Bible, that the Protestants might

* The confession was publicly read by Dr. Christian Bayer, Chancellor of the Electorate of Saxony, and presented to the Emperor, written both in German and in Latin.

might flatter themſelves, and not without reaſon, that this confeſſion of faith itſelf would make a conſiderable impreſſion upon the minds of their opponents, and deſtroy, or correct, many wrong ideas which had hitherto been formed of them by the world in general.

The concluſion of the laſt article was particularly remarkable, and may ſerve as a ſpecimen of the ſtyle which prevailed throughout the whole. " Our churches," ſays this confeſſion, " do not " require the Biſhops to make peace with them, " and be reunited, to the prejudice of their honour " and their dignity, though, in caſes of neceſſity, " this would be no leſs than their duty; but they " only requeſt, that the Biſhops would remit ſome " unequitable grievances, which in former times " did not exiſt in the Church, and were adopted " contrary to the uſage of the Chriſtian commu" nity. When they firſt originated, they might " perhaps have had ſome reaſon in their favour; " but they are no longer ſuitable to the preſent " times we live in. It is undeniable likewiſe, that " certain impoſitions have been admitted through " miſconception. The Biſhops, therefore, ought to " have the goodneſs to mitigate them, ſince ſuch " an alteration cannot tend to injure the preſer" vation of the Unity of the Chriſtian Church. " Many traditions, which were of human inven" tion, in the courſe of time have fallen to nought " of themſelves, and are no longer neceſſary to

" be

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"be obſerved, which even the Pontific rights ſuffi-
"ciently evince; but if it cannot be granted for ſuch
"ordinances, which are merely human, and which
"cannot be obſerved without ſinning againſt God,
"to be moderated, or wholly aboliſhed, we muſt
"follow the rule of the Apoſtle, which commands
"us to be obedient to God rather than to Man."

The work had a preface; and at the end of it an addreſs was added to the Emperor with the reſpective ſignatures of the Proteſtant States, though at that time theſe were only the Elector of Saxony, the four other Princes who have been already mentioned, of Anſpach, Luneburg, Heſſe, and Anhalt, and the two Imperial cities of Nurenberg and Reutlingen.

In this whole affair, it was evidently by no means the deſign to draw up a SYMBOLICAL BOOK *, which, beſides the contents of the Bible, was to ſerve as a rule, or for precepts of faith. The real deſign of it was, to lay before the world the principles which thoſe who profeſſed the Proteſtant faith had adopted, and what they had rejected; and this was done with ſo much modeſty, and with ſuch references only to the contents of the Bible, that even now, every upright Proteſtant Chriſtian muſt willingly make the ſame confeſſion, both with his heart and lips.

It

* The title of the Compendium, or Articles of Faith, in the Lutheran Church.

It deſerves to be particularly remarked, that according to the ſpirit which predominates throughout the whole confeſſion, there are no traces to be found of the Proteſtant Princes and Imperial States being the authors of theſe doctrines, and the revolution which they produced in the Church. The States which are here introduced taking an active part in the conference, do not ſay that they *had* made an alteration in any of the abuſes which they had obſerved in the Church, by *their own territorial power*, or that theſe alterations were made by their *order* or *command*; but they ſpeak only of ſuch alterations as *were* made, and that as Sovereigns and Magiſtrates, who were convinced of the conformity of ſuch alterations to the word of God, they found themſelves compelled to *tolerate* them. So much does this teſtimony corroborate what I have before remarked in the courſe of the hiſtory, that the Reformation did not originate among the ſuperior, and deſcend to the lower claſs of people, but ſpread from the lower to the higher; and it was perfectly natural that the Proteſtant States ſhould now deliver their ſentiments at the Diet for themſelves, and in the name of their ſubjects, who were of the ſame perſuaſion.

When this confeſſion of faith was formed, there was only a ſingle point which appeared to be the ſmalleſt obſtacle. This was the difference of opinion reſpecting the meaning of the words of our Saviour, at the inſtitution of the Sacrament: "This

"is

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"is my body, and this is my blood." Zuinglius, and ſeveral of the divines of Swiſſerland, contended, that the ſenſe of the words was to be ſo taken, that the bread and wine in communion were only a ſign and repreſentation of the body and blood of Chriſt. Luther, on the contrary, would abſolutely adhere to the literal ſenſe of the words. A conference had been held, at the inſtance of the Landgrave Philip, in the year 1529, by Luther and Zuinglius at Marburg; but the reſult of it was fruitleſs. This difference of opinion occaſioned four Imperial cities to deliver a particular confeſſion for themſelves at the Diet of Augſburg, where the above-mentioned confeſſion was delivered *. How much is it to be wiſhed, that no further ſeparation had taken place on this ſubject among the Proteſtants, or at leaſt that they had been united in what was eſſentially requiſite for the public worſhip of God, and that the meaning of the words which were here the ſubject of debate, had been left to every one's own inquiry and conviction! But the event at that period was in general by no means ſuch as was expected.

* Theſe cities were Straſburg, Conſtance, Memmingen, and Lindau.

CHAPTER

CHAPTER V.

Result of the Diet of the Empire. 1530—1555.

Contents of the Recess of the Empire of the year 1530 unfavourable to the Protestants—Ferdinand I. elected King of the Romans—The Council of Regency, and the Swabian league dissolved—The Dutchy of Würtenburg restored to Duke Ulric—Religious treaty at Nurenberg in 1532—Peace of Cadan—Rules to be observed at the future elections of the Kings of the Romans—Würtenberg a mesne fief of Austria—History of the Anabaptists at Munster—Progress of the reformation in various countries and towns—particularly in the Bishoprick of Naumburg, and Archbishoprick of Cologne—Attack, conquest, and imprisonment, of Duke Henry the younger, of Brunswick-Wolfenbüttel—League of Smalkalde, and the league formed to oppose it—Peace of Crespy—The army belonging to the league disbanded—Battle of Mühlberg—Subjection and imprisonment of the Elector of Saxony and Landgrave of Hesse—Diet at Augsburg—Plan of reform proposed by Charles V. to the Ecclesiastical States—The *interim*—Proscription and subjection of the city of Constance—Siege of Magdeburg raised by the Elector Morrice, of Saxony—His alliance with France—Treaty of Passau, and religious peace of Augsburg.

IN the Recess of the Empire in 1530 the Protestants were only allowed a respite till the 15th of April, 1531. Zuinglius and his adherents were absolutely excluded from having any part in it. The Fiscal * was

* The Chamber FISCAL is a law officer, who has the management of public causes. He sits on a separate bench, with his sword on; and, as he ranks above the Advocates, has the privilege of being first heard. He must prosecute for any offences committed by any of those over whom he has the inspection, and, if unsuccessful, pay the charges.

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was ordered to commence actions for damages on account of the suppressed convents; and on the very day that John, the Elector of Saxony, departed from Augsburg, Joachim, the Elector of Brandenburg, declared, in the name of the Emperor, and the Catholic States, "that they had formed a league, "and bound themselves by the most solemn oaths, "to spare neither their estates nor blood, but risk "their persons and their lives, their country and "their people, to support each other, and eradi-"cate Luther's doctrines." The design of this was to make the Elector waver; but it was not yet accomplished. He continued still the STEADFAST; a name which his conduct very justly acquired him in history.

The circumstances were of still greater importance when Charles V, immediately after the Diet at Augsburg, procured his brother Ferdinand to be elected King of the Romans at Cologne, January 5th, 1531, by which the Council of Regency was finally dissolved; and, on the other side, the Landgrave Philip, after having with a great deal of policy procured the dissolution of the Swabian league, seized a favourable opportunity in the year 1533, of reinstating Ulric, Duke of Würtenberg, in the possession of his territory. The series of wars with the Turks and with the French, procured the Protestants terms of pacification, in 1532, at Nurenberg; and in 1534 a peace was concluded at Cadan, in Bohemia.

The

The treaty of Nurenberg might already be considered as the preliminary of a religious peace. The processes in the Imperial Chamber were ordered to be suspended, and even Protestant Assessors were not excluded. With respect to the Augsburg confession, it was agreed by treaty, that the Protestants should make no further innovations till the meeting of a general council, and that they should neither adhere to Zuinglius, nor protect the subjects of the other party, in matters of faith.

In the peace of Cadan, in 1534, the protest, which not only the Elector of Saxony and Landgrave of Hesse, but the Dukes of Bavaria, had entered against the election of the King of the Romans, was concluded with a determination, that for the future there should be no election of a King of the Romans before the question was determined by a decree of the Electoral College, Whether it was necessary? The Duke of Würtenburg, on the other hand, was secured in the repossession of his territory, but upon this severe condition, that the Dutchy of Würtenberg should in future be a mesne fief of the House of Austria. Though afterwards, in 1599, this mesne fief was converted into an assurance of the reversion of Würtenberg to Austria; by which the question remains undetermined, Whether this is still valid, now that the House of Austria is extinct before the House of Würtenberg, or whether it continues to the Austrian issue of the female line?

Both

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Both parties agreed that the Anabaptiſts, who perſiſted in committing great diſorders, ſhould not be included in the peace of Cadan. The diſorders occaſioned by theſe people were carried to the greateſt height at Munſter, where they even depoſed the Biſhop, the Chapter, and the Magiſtrates of the city, and added the moſt dreadful and unheard-of cruelties to their frantic fanaticiſm. Such a conduct as this, which ſubverted all order and government, was very far from the ſpirit of the Proteſtant religion. The Proteſtant States therefore willingly contributed to aſſuage the tumults of Munſter, though ſixteen months elapſed before they could take the city(*a*).

During this period the Proteſtant party conſiderably increaſed. In Pomerania, Duke Barnim, in 1532, declared himſelf and his part of the country in favour of the reformation; and ſoon afterwards, in 1534, the other Dukes of that country procured eccleſiaſtical rituals to be drawn up by a man named Bugenhagen, which were univerſally adopted. In 1532, George, Biſhop of Verden, of the Houſe of Brunſwick, embraced the Proteſtant doctrines, and ordered them to be preached throughout his Biſhoprick. In 1533, John, Duke of Juliers,

(*a*) The whole hiſtory of this affair has been lately publiſhed under the title of "A New-Year's Gift from Weſtphalia, for "the German Youth." Part I. Hiſtory of the Taylor and Fanatic, King John, of Leyden, in Munſter, 1535, by A. L. Schlötzer, Gottingen, 1784; and is exceedingly well worth reading.

* See likewiſe Robertſon's Hiſtory of Charles V, Vol. II. p. 350.

liers, Cleve, and Berg, declared himſelf againſt the Church of Rome. In 1534, Duke Philip employed Nicholas Amsdorf to ſettle the eccleſiaſtical government upon Proteſtant principles, in the principality of Calenberg. To this may be added, the alterations which were made in favour of the Proteſtant religion in the Imperial as well as other conſiderable towns; as at Lubeck, in 1530; at Ulm, 1531; at Schweinfurt, Bremen, and Oſnabruck, in 1532; and at Augſburg and Hanover in 1534.

After the peace of Cadan, the cauſe was ſtill further promoted, by Ulric Duke of Würtenberg's being at liberty to give the reformation free courſe throughout his territories, in the year 1535; and in the Electorate of Brandenburg, when Joachim II. ſucceeded his father, Joachim I, in 1537, who after the year 1532 had declared himſelf a friend to the reformation, and after the example of his brother John, Margrave of Cuſtrin, who had begun it in his Margraviate in 1538, eſtabliſhed it throughout his dominions in the year 1539.

In the ſame year, 1539, the dominions of George, Duke of Saxony, whoſe ſon was already dead, devolved by his death to his brother Henry. This Prince had declared himſelf in favour of the Proteſtant faith in the year 1537, and now introduced the doctrines of the reformation, which his predeceſſor had hitherto ſo zealouſly endeavoured to ſuppreſs, in this part of Saxony likewiſe, to the

 inexpreſſible

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inexpreſſible joy of the inhabitants. Otho Henry, Count Palatine of Neuburg, followed his example, as well as the Abbeſs of Quedlinburg, and the cities of Halberſtadt, Magdeburg, Halle in Saxony, and Ratiſbon.

A circumſtance which was of ſtill greater conſequence was, that the Elector of Saxony, in the year 1541, when the Biſhoprick of Naumburg was vacant, would not allow the new Biſhop, Julius de Pflug, who was elected by the Chapter, to take poſſeſſion of it, but appointed Nicholas Amſdorf, a ſuperintendant of the church of Magdeburg, in his ſtead; and in the year 1545, Herman, Elector of Cologne, a Count of the Houſe of Wied, publicly confeſſed the Proteſtant faith, and endeavoured to promote the reformation in his territories. (*a*)

Matters were carried ſtill further in the year 1542, when Henry, ſurnamed the Younger, Duke of Brunſwick-Wolfenbuttel, on account of private deſigns againſt the Electorate of Saxony and Heſſe, which were accidentally diſcovered, was ſuddenly attacked, and obliged to quit his country; and when he attempted

(*a*) This example is very far from ſerving as a proof that the Proteſtant religion was introduced by the ſovereigns of the different countries without the concurrence of their ſubjects; as JOH. ANT. MERTENS alledges in his book on the ſtate of religion in the ſuffrages at the German Diet, p. 60, 61, where he expreſſes a wonder how the author of this work can "amuſe his friends with ſuch a palpable falſehood."

attempted again to conquer it, was taken in a battle which he loſt on the 20th of October 1545, in the neighbourhood of Nordheim, and impriſoned at Ziegenhayn.

In the year 1530, when the reſult of the Diet was ſo unfavourable to the Proteſtants, they had formed a new defenſive league among themſelves, which was renewed for ſix years in 1531, and again for ten years in 1536. In oppoſition to this, ſome Catholic States entered into the Holy League, as it was called, July the 10th, 1538, at Nurenberg, but without proceeding at that time to any acts of hoſtility, except in the affair of Brunſwick, becauſe the Emperor, as well as the King of the Romans, were continually engaged in foreign wars, which threatened to be of long duration. At laſt however, in the year 1544, the peace of Creſpy with France, and a truce with the Turks, put an end to the troubles which the Emperor and his family experienced abroad, and enabled him to act with greater vigour in Germany.

The confederates of the Schmalkaldic league thought it was better not to wait till the Emperor's preparations for war were compleated, and he made the firſt attack. They took the field there- A. C. 1546. fore in July 1546, with an army of more than eighty thouſand men. The Emperor ſucceeded ſo well by a diverſion which Duke Maurice, of Saxony, made in the dominions of his couſin the Elector,

 in

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in endeavouring to put in execution the ban which the Emperor had publiſhed againſt him, that he cauſed the Elector to quit the confederate army in order to ſave his own dominions; upon which the Proteſtants ſeparated, without coming to any engagement. The Elector indeed accompliſhed his deſign againſt Duke Maurice; but the Emperor himſelf ſurpriſed his army on the 24th of April, 1547, in the neighbourhood of Mühlburg, defeated it, and afterwards took the Elector priſoner. He afterwards laid ſiege to Wittenberg, and on the 18th of May obliged that city to capitulate. The Landgrave Philip likewiſe, who was prevailed upon to come to Halle to ſubmit to the Emperor, was ſeized, and detained a priſoner.

Thus the Emperor made himſelf maſter of the Schmalkaldic league, and in fact, of the whole of Germany; for he inveſted Duke Maurice, at a Diet which he convoked at Augſburg, with the Electorate of Saxony, forfeited by the proſcription of the Elector John Frederick, and was enabled to follow his inclinations, in every other reſpect almoſt, without controul. On the 13th of December, 1545, a Council was opened at Trent, to take into conſideration the religious controverſies; but the proceedings were not ſuch as the Emperor had wiſhed for (a); and it

(a) The Emperor's opinion was, that the Council ſhould firſt begin with a reformation in the eccleſiaſtical diſcipline, and afterwards proceed to the articles of faith; but the Council began with the latter, and immediately confirmed the Apocrypha, the Vulgata, and the Traditions.

it was interrupted in March 1547, by the incursion of Sebaſtian Schertel into Tyrol. In this ſituation of affairs, the Emperor inſiſted upon opening the council again. In the mean time, however, he propoſed two different plans at the Diet, by which he was in hopes the affair would be permanently ſettled. At firſt he ordered a ſcheme of reform, containing ſome neceſſary alterations in the ſtate of the Catholic Church, to be laid before the ſpiritual Electors, the Princes, and States, which they immediately accepted, in compliance with his wiſhes, and promiſed to procure it a favourable reception with their ſubordinate Clergy and Chapters at the ſucceeding epiſcopal ſynods, or provincial councils (*a*). This was immediately done in ſeveral inſtances (*b*), but was afterwards almoſt totally forgotten.

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(*a*) Receſs, 1548, § 12. The plan propoſed for a Chriſtian reformation, was drawn up in the Latin language, and immediately printed, with the title of "*Formula Reformationis, per* "*Cæſaream Majeſtatem Statibus Eccleſiaſticis,* in Comitiis Auguſ-"tanis ad deliberandum *propoſita, et ab eiſdem,* ut paci publicæ "conſulerent, et per eam eccleſiarum ac cleri ſui utilitati com-"modius providerent, *probata et recepta.* Mogunt. excud. JNO. "SCHOEFFER," et Colon. per JASPAR GENNEP. 1548. Other copies of it may be found in GOLDAST, *Conſtit. Imperial.* Tom. II. p. 235; in LÜNIG's Imperial Archives, Part. Gen. Contin. p. 850; and in HARZEIM, *Concil. Germ.* Tom. VI. p. 472.

(*b*) A particular account of the ſynods held for this purpoſe, in the years 1548 and 1549, at Cologne, Paderborn, Mentz, Würtzburg, Augſburg, Liege, Treves, Straſburg, and the provincial

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He then publicly declared his opinion reſpecting the meaſures to be adopted with the religious controverſies in Germany, till the meeting of a general Council. This was afterwards known by the name of the INTERIM; and allowed, among other things, the reſtoration of the cup, and marriage of prieſts. Every thing elſe almoſt was left on its former footing. But neither the Proteſtants nor Catholics were ſatisfied. The latter were diſpleaſed becauſe the Emperor, as a temporal monarch, uſurped authority in matters of religion, and yielded in ſuch important points; the former, becauſe the points in which they were indulged, were not ſufficient to content them. Many of the Proteſtant countries and cities ſaw themſelves under the neceſſity of accepting the INTERIM which the Emperor offered them, in order to avoid the fate of the Imperial city of Conſtance, in Swabia, which was put to the ban of the Empire for refuſing it. The King of the Romans, in quality of Arch-duke of Auſtria, was commiſſioned to execute the ſentence; and reduced it, from a free Imperial city, to a provincial one, ſubject to the Houſe of Auſtria.

The city of Magdeburg was likewiſe put to the ban of the Empire for refuſing to accept of the INTERIM,

vincial councils in the Archbiſhopricks of Mentz, Treves, Cologne, Salzburg, may be found in ANDR. BRAUBURGER, *de Formula Reformationis Eccleſiaſticæ, ab Imp. Carolo V. in Comitiis Auguſtanis, a.* 1548. *Statibus Eccleſiaſticis oblata.*—Mog. 1782, p. 29, ſq.

INTERIM, but made an obſtinate reſiſtance, and with more ſucceſs; for after a ſiege, which the Elector Maurice carried on againſt it, from the 16th of of September, 1550, till the 9th of November, 1551, in behalf of the Empire, the city capitulated on advantageous terms. This circumſtance gave the whole affair a different turn; for Maurice in the mean time, on the 5th of October, 1551, had concluded a treaty with King Henry II. of France, at Friedewald, which was afterwards ratified, January the 15th, 1552, at Chambort. In March 1552 he ſuddenly turned his arms upon the Emperor himſelf, at a time too when King Henry II. broke in upon Lorraine, after he had previouſly taken poſſeſſion of Metz, Toul, and Verdun, with the intention of making himſelf maſter of the city of Straſburg, and then acting jointly with Maurice on the German ſide of the Rhine. The latter deſign did not ſucceed; but the King of the Romans, to whom Charles now entruſted all the affairs of Germany, ſaw himſelf under the neceſſity of concluding a treaty with the Elector Maurice at Paſſau, by virtue of which his father-in-law, Philip, not only regained his freedom, which the Emperor had already given his priſoner, the Elector John Frederick; but the Proteſtants were indulged with their religious liberty. The Emperor himſelf laid ſiege to Metz towards the end of the year 1552; but his attempts to retake that city were in vain. He retired afterwards to the Netherlands, and at laſt entirely to Spain.

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The King of the Romans convoked a Diet of the Empire at Augſburg, where a peace was formally concluded between the two religious parties, on the 25th of December, 1555, and the articles of it inſerted in the Receſs of the Empire.

CHAPTER

CHAPTER VI.

Principal Contents of the religious Peace of 1555, as far as they concerned the reciprocal Conduct of the different religious Parties in general.

The peace concluded, and made perpetually binding, though the hope of a reunion of the two religions was not wholly abandoned—The Catholic and Proteſtant States not to perſecute or inſult each other on account of their different religious ſentiments—In the Imperial cities likewiſe, one party not to moleſt the other—This the true ſpirit of the peace—But according to the ſyſtem of the Hierarchy, it was difficult to introduce a ſpirit of toleration and brotherly behaviour—as well as to deſtroy the falſe idea which prevailed, of the relation in which a predominant Church ſtood to a foreign religion, tolerated merely as an act of favour—The caſe was here quite otherwiſe, as one part of the nation had entirely changed its religious ſentiments—without leſſening the duties they owed to the government—Even the Proteſtant ſubjects of Catholic States were very equitably ſecured in the poſſeſſion of their religious worſhip by an edict iſſued by the King of the Romans—But in the peace itſelf, no other condition was made than the free ingreſs and egreſs of the ſubjects.

WHEN the religious peace was concluded, the idea of a poſſibility of obtaining a union in religion, and even in the eccleſiaſtical rites, either through a general Council, or at leaſt a national Aſſembly, or elſe by means of conferences or negociations of the Empire, was not totally given up. If this, however, did A. C. 1555.

did not take place, the peace was to be confidered in every refpect as firm, permanent, and unconditional, and to continue in its full force for ever.

It was particularly fettled, therefore, as it had been in fome meafure already by the treaty of Paffau, "that no States of the Empire fhould be molefted, injured, or fuffer any violence whatever, on account of their adherence to the Confeffion of Augfburg, or the doctrines, religion, and faith, which they profeffed; that they fhould in no refpect be compelled againft their confcience to deviate from the religion, faith, ecclefiaftical rites, ordinances, and ceremonies, which were already, or might in future be eftablifhed in their principalities, countries, and lordfhips; nor aggrieved by any mandate, or in any other manner, nor fuffer any infult; but that they fhould be left in the quiet and peaceable poffeffion of fuch religion, faith, ecclefiaftical rites, ordinances and ceremonies, as well as in their eftates and property, their territories, governments and prerogatives in general.

"That the States, on the contrary, who adhered to the Confeffion of Augfburg, fhould leave the Emperor and thofe States, both fecular and fpiritual, together with their Chapters, and all the Clergy, notwithftanding they might have changed their refidence, who continued to adhere to the old religion, in like manner in the quiet and peaceable poffeffion of their religion, faith, ecclefiaftical rites, ordinances and ceremonies, as well as in their eftates and property,

perty, their territories, ſubjects, government, general prerogatives, revenues, dues, and tithes, without moleſtation or reſtraint, and undertake nothing either in word or deed to their prejudice.

"That in free and Imperial cities likewiſe, where both religions had been hitherto eſtabliſhed, both ſhould continue as they were. That the burghers, and other inhabitants, whether eccleſiaſtics or laics, ſhould live peaceably and quietly with each other. That neither party ſhould attempt to aboliſh the religion or eccleſiaſtical rites of the other, nor compel their adherents to relinquiſh them; but that each party ſhould leave the other in quiet and peaceable poſſeſſion of their religion and eccleſiaſtical rites, as well as their eſtates and property."

This was, in fact, the only equitable method which could be adopted. As ſo large a part of the nation had once changed their religious ſentiments, and another part perſevered in their former perſuaſion, there was no alternative than that both parties ſhould be left to their own way of thinking; and in other reſpects that the bond by which all the Imperial States, as members of the ſame Empire, were connected, ſhould be left entire. Beſides this, all compulſion in matters of religion was contrary to nature; and it was perfectly conſiſtent with the conſtitution of the Germanic Empire, for the religious peace to treat the countries belonging to the States and the Imperial cities, as two ſeparate objects. Each of the former

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former acted for itſelf. As ſoon as the territorial Lord, and his ſubjects, agreed to introduce eccleſiaſtical rites and ceremonies, according to the new perſuaſion, no one had in juſtice any right to concern himſelf. In Imperial cities, it was very poſſible for the religion to be mixed; that one part of the citizens and magiſtrates ſhould be of one perſuaſion, and another part of another. In this caſe, it was moſt rational to leave each their freedom of conſcience. This therefore was the true ſpirit of religious peace, that Germany, conſidered in the whole, both the Catholic and Proteſtant States of the Empire, with their reſpective countries, ſhould leave each other unmoleſted in the poſſeſſion of religion and every other circumſtance, and yet ſtill continue to obſerve all the duties due to each other, as members of the ſame Empire; and that in every Imperial city, where there were perſons who adhered to both religions, they ſhould in like manner behave towards each other as members of the ſame republic.

The worſt was, that the Catholic hierarchical ſyſtem ſtill proceeded, from the principles of the unity of the Church, to deny ſalvation to all thoſe who did not continue to belong to it; and even made a merit, not only of preventing any one from abandoning this ſyſtem, but of uſing all poſſible means to recover thoſe who had done it already: ſo that it was difficult to unite with this ſyſtem a ſpirit of toleration and brotherly behaviour towards perſons of a different perſuaſion.

To

To this may be added an unfair repreſentation of the ſtate of both religions, which many are inclined to favour, even in the preſent day. It was then the opinion, and an opinion which ſtill frequently prevails, that as the Roman Catholic religion was once the predominant religion throughout Germany, the admiſſion of the Proteſtant faith, which now made its firſt appearance in that country, was entirely optional. This might perhaps have been the caſe, if the whole Empire had always entertained, and continued to entertain, the ſame ſentiments with reſpect to religion, and a number of foreigners, of a different perſuaſion, demanded admiſſion. As if the queſtion could ever ariſe, whether Spain ſhould admit a colony of foreign Proteſtants? But the caſe here was totally different: a part of the nation itſelf, Imperial States and ſubjects, who were already in the country, had changed their religious ſentiments, and thought themſelves convinced that they had diſcovered errors and abuſes in the former practices, which they could not continue to encourage without hazarding their own ſalvation, and laying a conſtraint upon their conſciences. They did not therefore require to be received as ſtrangers newly arrived; but only to continue as they were, without ſuffering compulſion or aggrievance on account of the alteration in their religious worſhip. It was not by any means the queſtion therefore, whether thoſe who adhered to a foreign religion, ſhould be admitted and tolerated, or not admitted and tolerated; but whether one part of a nation had a right to reject, deſpiſe, and perſecute the other, becauſe it had changed its

its religious views and ſentiments? It is true that when a change of religious ſentiments ſerves as a pretence for neglecting the neceſſary duties towards the State, ſubverting the government, and occaſioning diſorders in the commonwealth, as was the caſe with the Anabaptiſts, every State, nay the whole of Germany, certainly would have reaſon to unite as in a common cauſe againſt it: for which reaſon, the Proteſtant party did not heſitate a moment expreſsly to teſtify their approbation of the excluſion of ſuch ſects from the advantages of the religious peace. But without any detriment to civil ſociety, the Proteſtant religion, as it firſt originated in Germany, was not in ſuch circumſtances, that thoſe who profeſſed it in the different territories, or Imperial cities, could merely on that account have been expoſed with juſtice to oppreſſion, perſecution, or contempt. In this reſpect, even the idea that the Catholic religion predominated throughout all Germany, was no longer admiſſible.

This, however, made it more difficult to determine what meaſures ſhould be adopted when the ſubjects of a Principality, or other country belonging to a State of the Empire, wiſhed to have the exercise of another religion, and the territorial Lord oppoſed it. The day before the religious peace was concluded, September 24, 1555, the King of the Romans voluntarily iſſued a declaration on the ſubject, by virtue of which, the Proteſtant nobility, towns, and pariſhes, in Catholic dominions, were ſecured in the exerciſe of their religious privileges, though the Catholics diſputed

disputed the validity of this declaration, and exerted themselves to the utmost of their power against it. CHAP. VI.

In the religious peace itself, it was only enjoined, that if Catholic or Protestant subjects were disposed to remove on account of religion from one country into another, with their wives and children, they should be allowed free egress and ingress, with permission to dispose of their effects and property, without being accused of any breach of honour or allegiance. They were only to make some compensation for their former feudal services or villanage, and the tax usually paid on removing from one jurisdiction to another, where such dues were established by custom (*a*); but no infringement was to be made on the rights and usages of a government, or their liberty of discharging their villains, or of keeping them in servitude. No State moreover should compel, or practise any arts to persuade, another, or the subjects of another, to embrace his religion, nor countenance or take them under his protection against the will of their government; but with this proviso, that no infringement be made on the rights of such as possess the ancient privilege of appointing their own patrons and protectors.

(*a*) It was before ordained in the Recess of the year 1530, Art. 60, in favour of Catholic subjects, who were disposed to remove out of Protestant lands or cities, that they should be allowed free egress and ingress, without being aggrieved by any tax or deduction from their property; but it was now mutually settled, that the usual rights of deduction, &c. formerly allowed in such cases, should still continue.

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CHAPTER VII.

Ordinances of the Religious Peace of 1555, concerning the Ecclesiastical Jurisdiction.

The two parties of religion differ in their sentiments respecting the ecclesiastical jurisdiction, as it had been hitherto in exercise—The religious peace abolished it entirely over the Protestants, till a reunion took place—with some restrictions indeed respecting the objects of it, which could not be valid—The new ecclesiastical government among the Protestants was no object of the peace—The Protestant provincial States willingly allowed all the rights to their own Sovereigns, which the Papal Hierarchy, as the supreme power, had illegally usurped—Many rights even, which each congregation could now have exercised in a collegiate body, were willingly given up to the Sovereign and his Consistory—Thus the Protestant States represented two distinct characters, in the same manner as the Catholic Ecclesiastical States; one in the exercise of their rights of supremacy, and another in the exercise of their episcopal rights—The latter were, on that account, no necessary part of the supreme power among the Protestants; so that a Catholic Sovereign could claim the same power over Protestant subjects in his dominions—Neither could the supreme tribunals of the Empire, on this account, assume any spiritual jurisdiction over Protestants.

A.C. 1555. A GREAT difficulty arose in concluding the religious peace, respecting the ecclesiastical jurisdiction, as it was before exercised, according to the principles of the Church of Rome, which the Protestant States of the Empire, and their subjects, now no longer acknow-

acknowledged. Every Bifhop, whofe diocefs had extended itfelf over territories or Imperial cities which had embraced the Proteftant faith, confidered the ecclefiaftical jurifdiction, as he had formerly exercifed it, ftill as a right which he could not be deprived of, without his own confent, or even without the concurrence of the Pope and the whole Roman Catholic Church. The Proteftant States, on the contrary, confidered the whole ecclefiaftical jurifdiction, as it had been abfolutely feparated by violence from the fecular power, and come into the hands of the Archbifhops and Bifhops, under the Pontiff, as the higheft refort, as well as all the hierarchical fyftem of the Roman Church, as an illegal abufe, inconfiftent both with the rights of the fupreme power poffeffed by every temporal government, and with that freedom of confcience which every Proteftant State thought he had now a right of afferting for himfelf and for his fubjects.

It was eafy to be conceived, that if the Proteftants were to enjoy their religious liberty, they could not acknowledge any fuperior, who held himfelf entitled to dictate to them in matters of faith, and whofe whole fyftem of religion differed in fuch effential articles from theirs. There was therefore no way left but that which the Religious Peace actually adopted, which was to abolifh the ecclefiaftical jurifdiction, as it was formerly exercifed, as far as concerned the Proteftants, entirely.

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As the idea ſtill prevailed, of a poſſibility of re-uniting the religions, there was a clauſe inſerted, "that the eccleſiaſtical juriſdiction ſhould not be exer-"ciſed over thoſe who adhered to the Confeſſion of "Augſburg, till the religious differences were com-"promiſed, but remain ſuſpended till that period, "and without effect." As it was previouſly evident that no ſuch union of religion would ever take place, which in reality has not yet happened, ſuch a ſuſpenſion of the former eccleſiaſtical juriſdiction with reſpect to the Proteſtants, was in fact exactly the ſame as if it had been totally aboliſhed.

The objects which the abolition of the eccleſiaſtical juriſdiction had in view, were ſo determined, that "it was not to extend to the religion, faith, appoint-"ment of miniſters, eccleſiaſtical rites, ordinances, "and ceremonies, which were then, or might here-"after be, eſtabliſhed by thoſe who adopted the Con-"feſſion of Augſburg; but that every thing ſhould "be left in full exerciſe, without any obſtacle or "injury: but that in all other affairs and caſes," the Peace adds, "which do not concern any of the arti-"cles above mentioned, the eccleſiaſtical juriſdiction "of the Archbiſhops, Biſhops, and other Prelates, "ſhould continue in the ſame force as before, with-"out any hindrance, in ſuch places where cuſtom "had already eſtabliſhed the exerciſe, and authorized "the poſſeſſion of it." It might eaſily be foreſeen, that this proviſo would be the occaſion of freſh diſ-putes, as it was impoſſible to ſay what caſes would

occur,

occur, where the Proteſtants were to remain ſubject to the former eccleſiaſtical juriſdiction, without infringement on their religious liberties. CHAP. VII.

In this article it was conditioned likewiſe, "that "the eccleſiaſtical Electors, Princes, and States, as "well as colleges, convents, and religious orders, "ſhould not be deprived, by the above-mentioned "abolition of the eccleſiaſtical juriſdiction, of their "rents, dues, revenues, and tithes, ſecular fiefs, or "other rights and privileges; that every State, in "whoſe territory ſuch revenues aroſe, or eſtates were "ſituate, ſhould continue to poſſeſs the ſecular go-"vernment, the ſame as before the commencement "of the religious controverſies; and that the above-"mentioned eſtates ſhould ſtill contribute towards the "neceſſary expences for the ſervice of the Church, the "miniſters and ſchools, and the maintenance of chari-"ties and hoſpitals, the ſame as before, without "regard to the religion of the proprietors (*a*)."

Throughout this article of the Religious Peace, mention is very conſiderately made only of aboliſhing the former eccleſiaſtical juriſdiction over the Proteſtants; but not a word ſaid about what was to be eſtabliſhed in its place. This abolition was certainly an object of the peace, which could not properly be ſettled any otherwiſe than by way of contract between both the parties. But when the Proteſtants were

 once

(*a*) Receſs, 1555. Art. 21.

BOOK V. once free from the eccleſiaſtical juriſdiction of the Archbiſhops and Biſhops, by means of this contract, enforced by a fundamental law of the Empire, it was afterwards their own affair, what form of eccleſiaſtical government they thought proper to eſtabliſh inſtead of the former one. The Catholics had as little buſineſs to concern themſelves with this, as the Proteſtants wiſhed to trouble themſelves about any future inſtitutions they might introduce in the Church of Rome.

As the Proteſtants conſidered the whole hierarchical ſyſtem as an abuſe, which prevented the Church from being regulated acording to the true ſpirit of Chriſtianity, it was neceſſary to remove this obſtacle, that they might enjoy their natural liberty. Neither was it neceſſary that there ſhould be a perfect uniformity preſerved in the new regulations of the churches of all the ſtates and countries which embraced the Proteſtant faith. This, as I have already obſerved, might be left to be more accurately ſettled according to the convenience of every particular State. In moſt of the countries of Germany, the provincial States and ſubjects willingly ſaw ſuch rights, which were formerly exerciſed by Biſhops under the Papal power, upon principles which they thought they could not in conſcience admit, transferred now to their reſpective Sovereigns, who adopted the ſame religious principles as they did; eſpecially as many of the rights which the Pope, the Archbiſhops and Biſhops aſſumed, belonged in juſtice, even

even according to the true principles of universal political and ecclesiastical law, to the supreme power alone. CHAP. VII.

Such rights, however, which in themselves did not belong to the supreme civil, but to the spiritual power of every ecclesiastical society, and might be exercised collegiately, were in most countries voluntarily left to the care of the territorial Lord, because the people had once been accustomed in such things to obey the laws of their superiors; and now every reason, which could possibly cause them to mistrust them, vanished, since the Sovereign and his people were agreed in their religious sentiments. According to the various forms of government, therefore, of the different territories, the concerns of this nature were partly committed in a greater or less degree to the provincial States; partly, and most commonly, particular Consistories were established, consisting of spiritual and secular counsellors, who had the inspection given them of almost all those things which, in Catholic countries, were solely under the care of episcopal, archiepiscopal, and papal authority.

Wherever, therefore, a Protestant State of the Empire, since that period, has had more power in the ecclesiastical affairs of his country than a Catholic secular State, he does not possess it by virtue of his territorial supremacy, for the Catholic and Protestant States possess this in an equal degree; but by virtue of particular acquired rights granted by his

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provincial States, becauſe he profeſſes the ſame religion with them. Every Proteſtant State, ſince that period, has repreſented two different characters, exactly as the Catholic ſpiritual States. The rights which theſe poſſeſs in common with ſecular States, are Germanic rights of territorial ſupremacy; but what they do not poſſeſs as Princes of the Germanic Empire, but in their other quality as Biſhops, are no rights of territorial ſupremacy. Thus a Proteſtant State exerciſes no more rights by virtue of his territorial ſupremacy, than a Catholic ſecular State. His authority in eccleſiaſtical affairs, is properly no part of his territorial ſupremacy, but a ſpiritual power expreſsly or tacitly transferred to him by the provincial States of his country.

No concluſion can on this account be drawn, from the rights which a Proteſtant Sovereign exerciſes over his ſubjects in matters of religion, that according to Proteſtant principles, all the rights belong of themſelves to the ſupreme power of every country: much leſs can a Catholic Sovereign, who has Proteſtant ſubjects, require that ſuch ſubjects who are not of the ſame religion as he is, ſhould grant ſimilar rights to him.

For the ſame reaſon, ſuch rights as theſe over Proteſtant States of the Empire, and their ſubjects, cannot be attributed to the Emperor and the Imperial courts of judicature. No further rights were attributed to them, either by the Religious Peace, nor in any

any other way, than they poſſeſſed before the religious diſputes began. There was no idea, therefore, that the Emperor, or Imperial courts of judicature, poſſeſſed any eccleſiaſtical juriſdiction; nor can it poſſibly be ſaid, that thoſe rights have again revived with reſpect to the Proteſtants, which were poſſeſſed by Charlemagne; for Charlemagne never had the exerciſe of ſuch rights as theſe, otherwiſe than over people who were all of the ſame religion as himſelf. The queſtion here is, "What rights a Catholic Emperor can claim over Proteſtant members of the Empire?" In general, many objections may very naturally be made againſt the revival of rights which have lain dormant for ſeveral centuries, in a country whoſe political conſtitution has in the mean time undergone a variety of changes. With reſpect to the Imperial Chamber, it would have been abſolutely neceſſary for a new commiſſion to have been expreſsly granted from the Emperor and the Empire; and therefore with the approbation of both parties of religion, if it was to obtain any new kind of juriſdiction, which would have been the caſe if that court had obtained a ſpiritual juriſdiction over the Proteſtant members of the Empire: but there was not the leaſt idea of the kind, either in the Religious Peace, or in any of the laws which were then enacted.

CHAPTER VIII.

Ordinances of the Religious Peace of 1555, *concerning the Convents and the* ECCLESIASTICAL RESERVATION.

The Proteſtant States very juſtly left to act according to their own judgment in the ſuppreſſion of the convents—excepting ſuch convents as belonged to another State—Concerning which the time of the treaty of Paſſau was fixed as a deciſive epoch—It was in general not inequitable for the high and inferior Proteſtant Nobility to be included in the proviſion expected from the immediate foundations—eſpecially when the Biſhop and Canons, as well as the ſubjects, changed their religious ſentiments—The Catholics could not be prevailed upon to accede to this—Ferdinand, therefore, by an arbitrary act, inſerted the ECCLESIASTICAL RESERVATION, as it is called, in the Peace—But this was of no validity, and unfortunately only the ſource of innumerable freſh diſputes.

ANOTHER important object of the Religious Peace, was the diſpute which aroſe between the two religious parties, concerning the eccleſiaſtical foundations. Moſt of the Proteſtant States had already followed the example of the Landgrave of Heſſe, by ſuppreſſing the foundations and convents in their territories, and applying the revenues to churches, ſchools, or other charitable inſtitutions. In fact, this was juſtifiable according to the principles, which

even the Catholics acknowledge, that the welfare of the State, and the real intereſt of religion, are conſiderably promoted by the wealth of the convents, when the objects for which they were originally deſigned are changed, being applied to purpoſes which are more wholeſome, and of more general utility; as the Catholic Powers and States themſelves, not only at preſent, but many years ago, have frequently made ſuch alterations in their own dominions. In many places this meaſure met with the approbation of the religious orders, and perſons belonging to the different foundations; and if this was not the caſe, ſuch perſons were either liberally provided for, or the Princes and States coincided in their opinions: and who had any right to concern themſelves further on the ſubject?

If the kingdoms of France, Spain, and Portugal, had no right to concern themſelves with any change which took place in the convents and ſpiritual foundations of Denmark, Sweden, and England; or if the Catholic cantons in Swiſſerland could not prevent the change which took place in the Proteſtant cantons; and if, in a word, in our own time, other States of the Empire, or even the Emperor himſelf, has not attempted to make any oppoſition, nor could have made any, when convents were ſuppreſſed, and their revenues applied to different purpoſes, in the countries of Hildeſheim, Munſter, Mentz, and Auſtria; what objection could be made, if the Proteſtant States thought proper to make ſuch alterations in the

ſixteenth

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fixteenth century, which upwards of two hundred years afterwards the Catholic Powers, and States of the Empire, have thought proper to make themfelves ? Yet at that time the Proteftant States, if they were not even accufed of facrilege, were thought guilty of a robbery. On this account, a variety of actions were commenced againft the Proteftant States by the Fifcal of the Empire, in the Imperial Chamber. The Chamber likewife had already frequently iffued mandates, and other judicial fentences, againft them. In the religious peace the Proteftants now firft procured, that the ordinance which gave directions concerning the confifcated ecclefiaftical eftates fhould remain in force, and that thefe States fhould no longer be expofed to law-fuits, or the difpofal of them meet with any further oppofition. The Imperial Chamber was at the fame time ordered to iffue no more citations, mandates, or carry on any further procefs, concerning fuch eftates as came within the meaning of the act.

Another fenfe was attributed to this article of the peace, which was afterwards the occafion of a variety of mifunderftandings and difputes. It occafionally happened, that convents and other fpiritual foundations, were fituated in a Proteftant country, though C. 1525. they properly belonged to another State; as for inftance, to fome immediate abbey, or other prelacy. When a Proteftant State, in whofe territory fuch convents or fpiritual foundations were fituated, was difpofed to make any alteration in them, the State who

who considered the foundation as his property, thought himself entitled to remonstrate, and apply for justice to the Imperial tribunals. In this case it was determined, that such convents or foundations as were suppressed at the time of the treaty of Passau, should continue so; but that those which were in the possession of the Catholic clergy, at the time of, or since that treaty, should not be alienated. The matter therefore was so settled in the Religious Peace, "that "such ecclesiastical estates as were confiscated, which "were not immediately held of the Empire, nor "belonged to any of the Imperial States, nor were in "the possession of the clergy at the time of the "treaty of Passau, nor since that period," should be included in the articles of peace.

An attempt was afterwards made to interpret this, that only such convents and foundations which were suppressed by the Protestants before the year 1552 should remain so; but this restriction had evidently only those convents in view, which belonged to other immediate States of the Empire. To limit the territorial right over other convents and foundations, which did not belong to any other State, was certainly by no means intended (*a*). The Protestant States, therefore, did not desist, even after the peace was concluded, from making such alterations as they pleased.

All

(*a*) An instance of a dispute which arose upon this subject, concerning the Monastery of Kemnade, which belonged to the Abbey of Corvey, but was situated in the Dutchy of Brunswick, occurs in PÜTTER's Cases of Law, Vol. II. Part II. p. 299, &c.

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All that has here been ſaid, concerns only eccleſiaſtical foundations which are mediate, and ſituated in the territories of a Proteſtant State. There was ſtill a grand queſtion remaining: What was to be done reſpecting immediate foundations, in caſe an Archbiſhop, a Biſhop, or other Prelate, or only a Canon, ſhould embrace the Augſburg Confeſſion? Here, likewiſe, the Proteſtants inſiſted upon a general liberty of conſcience, and that it ſhould be left, therefore, to every one's opinion, whether he would continue to adhere to the Catholic religion, or become a Proteſtant.

If the epiſcopal dignity be conſidered merely as an eccleſiaſtical office, at the firſt view it certainly appears equally impracticable for a Catholic Biſhop, if he becomes a Proteſtant, to continue to hold his office, as for a Proteſtant miniſter to keep his living when he becomes a Catholic. In this reſpect it is certainly juſt, that no Proteſtant can be a Biſhop of the Catholic Church, ſubject to the Papal Hierarchy; but as the Archbiſhopricks and Biſhopricks of Germany have once obtained the quality, that their poſſeſſors are at the ſame time Princes of the Empire, and have dominions to govern, ſo in the firſt place, in the twofold quality which every Biſhop united in his own perſon, partly as Biſhop, and partly as a Prince of the Empire and territorial Lord, the proportion was unqueſtionably ſo unequal, that if we examine the matter fairly as it is, we ſhall find, that the epiſcopal dignity in Germany is almoſt wholly loſt in the dignity of a Prince

Prince and Sovereign; and it is not the former, but this alone, which captivates the German Nobility, and makes them anxious to obtain it. Even the duties properly annexed to the episcopal dignity, are usually performed by suffragans, vicars, and officials, or other representatives, while a German Bishop devotes his time to his court, or the government of his dominions, instead of concerning himself with any of the ecclesiastical affairs committed to his care. It may almost be considered an exception to this general rule, when Bishops personally perform such ecclesiastical duties which they might leave to the care of others. Upon these premises it is not so exceptionable for a Bishoprick to continue in the Papal Hierarchy, and yet have a Protestant Bishop, provided the former only acts in the capacity of a Prince of the Empire, and Sovereign of his country, and leaves what is properly his episcopal business to the care of others.

But supposing a country committed to a Bishop as a Sovereign Prince, should embrace other sentiments in religion, the Bishop should afterwards have the same convictions, and the Chapter, or a part of it, agree with him! what should prevent such an ecclesiastical Prince as this from following those convictions, and gratifying the wishes of his subjects? This had already been the case with the Bishop of Lubeck. The States of his country were agreed with him in their religious sentiments, and, with the greatest part of the Chapter, embraced the Confession of Augsburg, and

and renounced therefore their obedience to the Pope. Was there any reaſon, that he ſhould on this account ceaſe to be Biſhop of Lubeck, and no longer enjoy the prerogatives of a Prince of the Germanic Empire, and Sovereign of his country? Or ought he to have returned the epiſcopal dignity into the hands of the Pope, and left the appointment of another Catholic Biſhop to the pleaſure of his Holineſs? But if the country was no longer Catholic, if there was no longer a dioceſs which required a Catholic Biſhop, where could be the uſe of appointing one?

On the other ſide, it did not at all follow, that a Biſhoprick, which had now a Proteſtant Biſhop, muſt neceſſarily ceaſe to be a Biſhoprick, or that it muſt be changed from an eccleſiaſtical into a temporal Principality; in ſhort, that it muſt be ſecularized. By no means! It might continue an eccleſiaſtical and elective Principality, as before; it might preſerve its Canons, who might ſtill enjoy their active and paſſive elective ſuffrages; in ſhort, it might remain exactly in its former ſtate, though the Biſhop and Canons were no longer Catholics, but Proteſtants.

All this was ſo much the more equitable, if it was done upon the principle of a freedom of choice, and without any degree of compulſion; and if the Proteſtant Nobility, or perſons of high rank, were now allowed acceſs to the epiſcopal dignities and incomes, and thoſe of the Canonries, which owed their original foundation to their anceſtors, as well as the Catholics.

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Even ſuppoſing that the whole of Germany was not agreed upon this, what objection could Bavaria, for inſtance, have to a Biſhop and Canons, of a Biſhoprick in Lower Saxony, following the conviction of their minds, and embracing another religion? Or ought the high and inferior Nobility of Lower Saxony to give up the advantages of proviſion in the epiſcopal dignities, or offices of Canons, on account of the change in their religion, to the Nobility of Bavaria, though theſe advantages were certainly originally founded by their own anceſtors, and not by the anceſtors of the Nobility of Bavaria? The Catholics in Spain, Portugal, &c. might inſiſt, with the ſame right, on the advantages of the epiſcopal, and other eccleſiaſtical dignities in Denmark, Sweden, and England, being ſolely granted to them. What reaſon was there therefore, that a Proteſtant Archbiſhop or Biſhop could not be elected in Lubeck, Magdeburg, Halberſtadt, Bremen, Verden, &c. when the countries themſelves, and the greateſt part of the Chapters, were Proteſtant? Or why ſhould a perſon, who had once obtained the dignity of a Catholic Biſhop or Canonry, and now changed his religious ſentiments, and embraced the Proteſtant faith, be for that reaſon deprived of his preferment? and merely becauſe he had adopted the Confeſſion of Augſburg, be puniſhed with the loſs of his only means of ſupport? Thus it might appear as a crime to embrace the Proteſtant religion. But it was by no means to be expected from the Proteſtants, that they would ever pliantly yield to ſuch principles as theſe.

The

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The Catholic party, in their turn, persisted equally as much in their refusal to yield. A union on this important point was therefore impossible; so that there was no alternative but to leave the matter undecided, and await the event of futurity. But what was the consequence? Though it was even said in the Religious Peace, "that the question respecting "the disposal of the prelacies or benefices of an "ecclesiastic who renounced his former religion, "could not be agreed upon between the States of "the different religions, when this peace was con-"cluded;" yet, instead of leaving it thus, the King of the Romans, by virtue of the discretionary power with which he was invested by the Emperor, issued a declaration of his own accord, that "where an "Archbishop, Bishop, Prelate, or any of the Clergy, "abandoned the old religion, he should instantly "relinquish his Archbishoprick, Bishoprick, Prelacy, "and other benefice, with all the profits and incomes "arising from them, without any refusal or delay; "but at the same time without any prejudice to "his character; and that it should be lawful for the "Chapter, or those in whom the right of election "was vested, to proceed immediately to the election "of a person who adhered to the old religion, and "who, together with the Chapter, should enjoy all "the privileges and revenues annexed to it; but at "the same time without prejudice to any accommo-"dation of the religious differences in future (*a*)."

This

(*a*) Corp. Jur. Publ. p. 161. § 18.

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This declaration got the name afterwards of the ECCLESIASTICAL RESERVATION, and was inserted, September 25, 1555, in the Recess of the Empire, among the articles of the Religious Peace. It follows of course that this article, which was disapproved of in a peace, where nothing could be obligatory which was not actually agreed upon by both parties, could never have any legal validity. If an order from the Emperor or King of the Romans could have supplied the place of an agreement, there would have been no need of any stipulatory negociations, for an order of this kind might have decided every thing; but such an absolute power as this could certainly never have been made use of. The ecclesiastical reservation, therefore, was then, and remained without any obligatory power whatever.

It was a lamentable circumstance, that a point which was of great importance, remained undecided in the peace itself, and gave the greatest reason to dread, that some time or other fresh disputes would break out, attended with the most fatal consequences! Both parties afterwards endeavoured to help themselves as well as they could. In many ecclesiastical countries, where the provincial States had already almost all of them renounced the Pope, Protestant Princes, Counts, and other Noblemen, were actually made Bishops and Canons; though this did not succeed where the Catholics, through the aid of the Imperial Court, could possibly prevent it.

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CHAPTER IX.

Favourable and unfavourable Proſpects of futurity—Equipoiſe of Religion among the Electors, and the Riſe of the Order of the Jeſuits.

The perfect equality of religion among the ſix Electors, a fortunate equipoiſe for the peace of Germany—Unfavourable proſpects of futurity, occaſioned by the riſe of the Order of Jeſuits—Their mode of education, morals, and acceſs to courts.—Method of acquiring wealth—Internal regulations of the Order—Their actual dominion over the world—Cloſe connexion of the Order with the Papal Chair—Private intereſt their grand object—Their principal exertions directed againſt the Proteſtants—either to expoſe them to deteſtation and perſecution—or to bring them back to the boſom of the Church of Rome.

IT was a fortunate circumſtance at the eſtabliſhment of the religious peace, as well as for the preſervation of it in future years, that the Electoral College conſiſted of an equal number of Catholic and Proteſtant members. The ſuffrage of the kingdom of Bohemia was now no longer reckoned in the electoral deliberations. In the laws of the Empire, there was mention made only of ſix Electors. Of theſe, the three ſpiritual ones, Mentz, Treves, and Cologne, were Catholic; and the three ſecular ones, Saxony, Brandenburg, and the Palatinate, Proteſtant; ſo that both religions

religions had an equal number of suffrages: and if we compare these six Electors with each other, not merely with respect to their number, but their weight in the scale of power and dominions, we shall find the balance evidently more in favour of the Protestants than of the Catholics.

Though the greatest part of the States in the College of the Princes continued Catholics, and endeavoured to render their majority of votes prejudicial to the Protestants; yet the Electoral College, without whose concurrence no Imperial decree could be enacted, fortunately preserved a counterpoise against them. So long as this continued, the Protestants enjoyed the surest means of defence, and the internal tranquillity of Germany was established on the firmest basis. Without this, notwithstanding the peace, little tranquillity could have been expected: for most of the Catholics could not renounce the idea, that theirs was the predominant religion, and that Protestantism was only newly admitted, and ought to be treated upon the principles of a partial toleration. To many, and very naturally to the Pontifical See in particular, the whole of the religious peace was extremely odious and intolerable. It was not easy to reconcile with the principles of Hierarchy, which hitherto prevailed, that a treaty could be considered as legal, which was concluded without the concurrence of his Holiness and the Church of Rome; but all this would have been of very little consequence, if the Papal Hierarchy, at the time when it

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received ſo great a ſhock, had not on the other ſide procured a new and powerful ſupport.

The ſupports which had hitherto ſuſtained the Papal Chair, afforded by Monachiſm, and by the Mendicant Orders in particular, were now become tottering and ruinous. Since the world was become more enlightened by the invention of printing, and reſtoration of ancient literature; and ſince Luther had proclaimed the truth aloud, and written with ſuch energy and perſpicuity, the ignorant monks had loſt the high reſpect they had formerly been held in, and were become the objects of ridicule. But a new Order aroſe now, of a ſpecies quite the reverſe of the former ones; a ſociety of men of choice abilities (*a*), who were free from the reſtraint impoſed upon the cloiſtered monks, which anſwered no purpoſe of utility. They had no regular hours ſet apart, either in the day or night, for the indiſpenſable performance of devotion; but applied themſelves to a more active life, by undertaking the inſtruction of youth, preaching, and hearing confeſſions, diffuſing religion among infidels, and endeavouring to prevent further ſeparations from the Church of Rome. Their internal conſtitution likewiſe, in ſome reſpects, differed widely from

(*a*) The original founder of the Order, it is well known, was Ignatius de Loyola, a Spaniſh Nobleman, who at firſt aſſociated with eight men of different nations, viz. Peter Faber, James Laynez, Claudius Jajus, Paſchaſius Broet, Francis Xavier, Alphonſus Salmeron, Simon Roderick, John Coduri, and Nicholas de Bobadilla.

from the institutions of other Orders. The form of government they adopted was that of absolute monarchy, and the strictest subjection to their General, and the Provincials and other Superiors who were dependent upon him. The See of Rome at first made some scruple of confirming the Order; and they might well have had reason to dread that such an Order as this might in time rise even superior to the power of the Pope. In the year 1540, the Order first procured a grant only for the number of sixty persons; but at last, on the 14th of March, 1543, they were allowed an unlimited establishment. The number of this Society of Jesus, or Jesuits, as they called themselves, before the close of the sixteenth century increased to ten, and afterwards to upwards of twenty thousand, and spread themselves throughout the Catholic States in every quarter of the world (*a*).

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 They

(*a*) A book which was written in honour of the Jubilee at the conclusion of the first century after the foundation of the Society, under the title of *Imago primi seculi Societatis Jesu a Provincia Flandro-Belgica ejusdem Societatis representata*, printed at Antwerp, in 1640, contains, p. 237, 248, a complete list of the number of provinces which were already in Italy, Spain, France, Germany, and Turkey; in Goa, Malabar, the Philippine Islands, China, and Japan, in the East Indies; in Mexico, Peru, Chili, Paraguay, Brasil, and Canada, in America; where the whole Order of the Jesuits had dispersed itself, with the number of professed houses, colleges, seminaries, houses of probation, residencies, and missions, which the Order was in possession of in the year 1626. Germany was divided into five provinces; the Upper and Lower Rhine, Upper Germany, Austria, and Bohemia. The Netherlands likewise were divided into two provinces, by the names of the Flanders and French Netherlands. The History of the Jesuits in the province

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They undertook every where the education of youth, without any pecuniary reward. Their manner of teaching

province of Upper Germany, forms a complete work of itself, under the title of IGN. AGRICOLA, *S. I. Historia Provinciæ Societatis Jesu Germaniæ Superioris, quinque primas annorum complexa decades*, Aug. Vind. 1727, 1728, in two folio volumes. Both these works discover a variety of things, both in the history and spirit of the Order, which may occasion still further reflection. A few short extracts from them, with remarks, occur in "The "Letters of a Layman, on the Weeds scattered during the period "of the duration of the Jesuits," published at Frankfort and Leipsic, 1785. "Very early traces occur of the influence which "the Jesuits had in the affairs of Germany. In the year 1540, "when a religious conference was to be held at Worms, Peter "Faber, a Jesuit, was deputed as private agent from the Pope, "to negociate with the Imperial agent, Peter Ortitz. When the "Pope sent Cardinal Moronus to the Emperor, he sent two Je-"suits, Jajus and Bobadilla, with him. The latter was well "received at the Courts of Inspruck and Vienna. In the year "1541, Faber was sent a second time to Germany, where he had "frequent interviews with the Bishops of Spire and Worms, and "particularly with the Elector of Mentz. Here he gained over "to his interest, among others, Peter Canisius, in the year 1542, "who afterwards made a very conspicuous figure as the first Pro-"vincial of the Jesuits in Germany, and whose catechism was "introduced in the year 1555, in preference to all others in the "Emperor's hereditary dominions, and afterwards throughout all "the Catholic part of Germany. The first places where Jesuiti-"cal Colleges were allowed in Germany, and therefore where "they were first firmly established, were, Vienna, in 1552; Prague, "1555; Ingolstadt, Louvaine, and Antwerp, 1556; Munich, 1559; "Mentz, 1560; Dillingen, 1563; Würtzburg, 1567; Fulder and "Spire, in 1571; Heiligenstadt, in 1574, &c. Ignatius, the "founder, and first General of the Order, lived till the year 1556. "His successor, James Lanez, first gave the Order its proper con-"sistency, and very much improved its regulations."

teaching was entirely new. Though it was more mechanical and superficial than with genuine taste or tendency to real improvement, yet their pupils were enabled to appear, and even imagine themselves, really possessed of knowledge. What method could be adopted, more eligible than this, to procure them universal access in every place they came to? For nothing can be of greater consequence to parents, than a consciousness that the education of their children is entrusted to proper persons. On the other side, how extensively might the circumstance of the Order's having monopolized the education of youth, both in the universities and schools, be employed to their own advantage? They had it now in their power to execute their plans with uniformity; to set bounds where they chose, and limit the extension of improvement; to instill every where such principles as they found most serviceable to the system of their Order; to acquire a knowledge of the capacities and propensities of such as were destined to be future citizens and statesmen; and in time to select those who possessed the best understanding for themselves, and encourage them to become members of their Society (*a*).

(*a*) A passage in the History of the Germans, lately published by Mich. Ign. Schmidt, at Vienna, 1785, p. 313—315, deserves, on account of its very pertinent reflections, to be wholly transcribed. "To a body which was all activity, animated entirely by one spirit, which laboured without ceasing, and with a combination of strength, for one object, and which, when it was "necessary

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The inſtruction in their ſchools was chiefly confined to a mechanical knowledge of the Latin language, and an artificial eloquence; to ſcholaſtic philoſophy and divinity, involved in innumerable technical terms and ſubtle caſuiſtical queſtions; and ſometimes a tincture of natural philoſophy and mathematics. A thorough claſſical knowledge, and the ſtudy of hiſtory, with what may be expected from ſuch ſources for the formation of the genuine ſcholar, was not what they deſigned to cultivate, or wiſhed to diffuſe.

Their

" neceſſary to complete their number, had the choice of the firſt " abilities, what could be impoſſible? What improvements in " ſcience, and of every thing which they ſet their hands to, might " not be expected! But in this ſyſtem, complete as it was, " many things were forgotten. Is not ſuch an education as this " too partial, where every thing is adapted in general, if not " entirely, to the intereſt of this body? May not the intereſt " of the State be forgotten thereby, or rendered ſubordinate to " their own? Will the individual members be ſufficiently at " liberty, without which no, or very little advancement can be " expected in the ſciences? Does not the State at laſt run the " riſk of the moſt dangerous monopoly being made of what muſt " be of the greateſt value to it? And if we examine the matter " in an economical point of view, is it not obliged to maintain " ten perſons perhaps before one is found fit for actual ſervice? " If ſuch a body conſiders too great a degree of improvement " contrary to the intereſt of religion, or their own deſigns, and " purpoſely encourages a certain degree of ignorance, and even " in the advancement of ſcience does no more than what is abſo- " lutely neceſſary for its own ends, and to give themſelves a ſupe- " riority over thoſe who are immediately about them; if the " monaſtic morals, attachment to the rules of their Order, and " traditional maxims, deſtroy every idea of true philoſophy, and

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Their principles, which taught them to oppress those who opposed them, were dreadful, and encouraged the practice of persecution and revenge. Where they found it convenient to their interest to treat those who confessed to them indulgently, their morals were flexible. One principle which they adopted, that an action was not sinful which was done from plausible reasons, and that a good intention could justify the worst of deeds, contributed exceedingly to the indulgence of the passions, and palliated at pleasure

" nip them in the bud when their pupils first begin to encourage " their growth; if ever the rules of the Order forbid the indivi- " dual members to teach any thing new, or different from the " others, as if their predecessors had exhausted every thing before; " if a spirit of universal government is inseparable from the " Order, and it is supposed to suffer an injury when it is not all " in all; if its members endeavour more to be feared than to be " beloved, and seek the confidence of the public more through " artful means than by actual merit; if they oppress all those who " stand in their way, by their weight and authority, or else by " private artifices, rather than gain them over by friendly infor- " mation and gentle conduct; if their zeal for religion is accom- " panied by morosity, and a spirit of persecution; if, in fact, " they have always their own interest in view, and for that pur- " pose attach themselves by vows to foreign courts, or rulers whose " views, in certain cases, are as far as possible from the real inte- " rest of their country; if this is the state of the Society, although " it may have some members who are learned, and men of abili- " ties, yet the true design of a well-regulated national education " cannot easily be accomplished."

It will be difficult to find another Catholic author, who has written with so much solidity upon this subject, as we here find from the pen of one of the first Catholic writers now in Germany.

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pleasure not only errors and misdemeanours, but the most flagrant vices and crimes. In their private deportment, their manners were graceful, their dress cleanly and respectable; and the whole of their external demeanour was distinguished by a particular attention to decorum, an amiable diffidence, and the strongest apparent attachment to virtue (*a*).

It

(*a*) At the time when the late inquiries were made concerning the Jesuits in France, in the years 1761 and 1762, among others, the following book was published: *Extraits des Assertions dangereuses & pernicieuses*, en tout genre, *que les* soi-disans *Jésuites ont*, dans tous les tems, persévéramment *soutenues, enseignées & publiées* dans *leurs Livres, avec l'approbation de leurs Supérieurs & Généraux*, vérifiés & collationnés par les Commissaires du Parlement, en exécution de l'Arrêté de la Cour du 31 Août, 1762, & Arrêt du 3 Septembre suivant, sur les Livres, Thèses, Cahiers composés, dictés & publiés par les soi-disans Jésuites, & autres Actes authentiques, déposés au Greffe de la Cour par Arrêts des 3 Septembre, 1761, 5, 17, 18, 26, Février, & 5 Mars, 1762; à Paris, chez Pierre Guillaume Simon, Imprimeur du Parlement, Rue de la Harpe, à l'Hercule, 1762.—This book consists only of passages from Jesuitical writers, classed under certain heads, in order to explain from thence the moral principles, and spirit of the Order. The heads were, 1) *Unité de Sentimens & de Doctrine de ceux qui se disent de la Société de Jésus*; 2) *Probabilisme*; 3) *Péché Philosophique, Ignorance invincible, Conscience erronée, &c.*; 4) *Simonie & Confidence*; 5) *Blasphême*; 6) *Sacrilège*; 7) *Magie ou Malefice*; 8) *Astrologie*; 9) *Irréligion*; 10) *Idolatrie Chinoise & Malabare*; 11) *Impudicité*; 12) *Parjure, Fausseté, Faux Témoignages*; 13) *Prévarication de Juges*; 14) *Vol, Compensation occulte, récelée, &c.* 15) *Homicide*; 16) *Parricide & Homicide*; 17) *Suicide & Homicide*; 18) *Lèze-Majesté & Régicide.* Against this appeared, *Réponse au Livre intitulé*, Extraits des Assertions, &c. I. Partie; *Infidélité du Rédacteur, prouvée par les Falsifications*

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It was not to be wondered at, therefore, that they soon raised themselves into notice at courts, and in considerable cities, and obtained general access to persons of rank and wealth, of both sexes, in preference to all the other Clergy. A very few years elapsed, before they acquired the possession of the pulpits in most of the churches of consequence, and the confessionals of almost all the Nobility and people of distinction. Other Orders, who enjoyed this privilege before, were soon reduced to the necessity of yielding to their superiority. Skilful in the tricks of monkery, they amused the vulgar with tales of miracles and extraordinary devotion, while the whole conduced to their own private emolument (*a*).

The

en tout genre contenues dans les Extraits, 1763. II. Partie; *Mauvaise Doctrine du Rédacteur des Extraits, prouvée par les Assertions qu'il dénonce*, 1764. In this book it is asserted, that it is impossible to judge of the principles of the whole Order from the writings of two or three Jesuits, and particularly in Italy; that in some passages of the writings here mentioned, many things were totally left out, and other passages at least falsely translated, &c.

(*a*) Thus, in the writings of the Jesuits, we find that Ignatius received the plan for the constitution and laws of his society, immediately from Christ, with the divine assurance, that none who became members of the Order during the first three hundred years, and continued in it till their death, should eternally perish: that the Virgin Mary appeared to him with the infant Jesus more than thirteen times, and gave him into his own arms; that Ignatius flew through the air, and went in a second from Rome to Cologne, to take leave of a dying friend; that he was often seen with a glowing and irradiated countenance, and hovering in the air; that he had

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The vow of poverty, as well as the vows of obedience and celibacy, which they took in common with other Orders, allowed the Jesuits individually to have no idea of wealth; but the whole society, and each particular college, might possess estates and revenues, which were chiefly expended in magnificent buildings, rich and valuable utensils for the service of their churches, libraries, gardens, &c. or for any other purpose to which the Superiors of the Order thought proper to apply them. According to this idea, charitable presents and legacies were by no means matters of indifference. Even in the choice of their members, wealth and superiority of birth came as much into consideration as great abilities, which were otherwise their favourite object. When widows, or other persons who possessed a considerable property, had none, or very distant relations to inherit it, the Jesuits thought no method too arduous, or too hazardous, to persuade them to bequeath some benevolent legacy in their favour.

No method of this kind was so productive, as one that was occasioned by a fourth vow, by which they laid themselves under an obligation to be employed in all missions to foreign countries, at the command of

had raised the dead, chased away spirits, &c. and that many other members of the Order had performed similar wonders, a considerable number of which are collected in the book already quoted, "Letters from a Layman," p. 13, &c. from a book intituled, "*Imago Primi Seculi*," and other books written by the Jesuits themselves.

of the Pope, and for the advantage of the Church of Rome, without requiring any pecuniary contribution from the Holy See for the purpose. The only condition they made was, that they should be indulged with the liberty of commerce, for the maintenance of their missionaries, in foreign nations which they laboured to convert. This afforded them an early opportunity of carrying on a profitable trade in the East and West Indies; which by degrees they so extended, that a source was soon opened of inexhaustible wealth. In the beginning of the seventeenth century, they made their way into Paraguay, a fruitful province on the continent of South America. The inhabitants, who had hitherto with difficulty procured themselves subsistence, by toiling in the chase, or fishing, were now first taught to till their lands, to encourage the breed of cattle, to value the advantages of social life, and cultivate the necessary arts, and conveniencies which render it endearing. To accomplish this purpose, the Society formed themselves into a state, where they bore the sway over more than an hundred thousand subjects; and keeping at a prudent distance from the neighbouring Spaniards and Portuguese, established themselves so firmly, that a military force, not only provided with arms, but thoroughly disciplined, was ready to obey their orders, whenever necessity obliged them to have recourse to any powerful means of defence.

The internal regulations of the Society were such, that no member, before he was three-and-thirty years

BOOK V. years old, and had been thirteen years in his novitiate, after a ſufficient mutual probation, could be admitted to the actual profeſſion; and even then there was a conſiderable diſtinction obſerved among the members of the Society, as they were thought more or leſs qualified to be initiated into the real myſteries of the Order. Their ſubordination was ſo ſtrict, that every Jeſuit totally renounced his own will, and was obliged to ſubmit with unreſerved obedience to his ſuperior. Thus each of them was gradually ſubject, firſt to his Rector, the Rector to his Provincial, and the whole Society to the General of the Order, who always reſided at Rome, and had a number of aſſiſtants there to execute his buneſs. This General, at ſtated times, or as often as he required it, received a written account from each of the provinces, in which the internal ſtate of the Society was accurately deſcribed, and the particulars communicated of other perſons and events, which could in any reſpect be intereſting to it. The General, by ſuch means as theſe, was enabled to procure intelligence from every country and corner of the world, and ſtrengthen the influence of his Order.

Thus this Society, before the world was aware of it, actually acquired an univerſal dominion. There was no cabinet which they found impenetrable; no concern, too great or too ſmall, where they were not able to procure acceſs and influence, if it correſponded with their intereſt: and woe to that perſon

son whose misfortune it was to feel the overbearing power of the Order, its hatred, or revenge!

The Jesuits, in the whole of their conduct, looked up for support to the authority of Rome; for which reason every member of the Order endeavoured to promote and defend the supremacy of the Holy See to the utmost of his power: but, in reality, this was only a scheme to enable themselves to exercise the most absolute power, under the shield of the Papal Hierarchy, in the confidence that the Pontiff himself could not exist without them, and seldom act otherwise than agreeably to their intentions and directions.

Thus the Order continually made the reputation of promoting the welfare of the Church, and the will of its visible head, a shield to all its undertakings; while the real spring, which actuated all their motions, and the grand object to which all their actions tended, was the advancement of their own Society. This gave the whole body, and every individual member of it, such a degree of firmness, such connexion, and such a spirit, which actuated the whole machine, that it would be exceedingly difficult to produce a similar example. One spirit, one soul, seemed to animate the whole Society. One member spoke exactly as the others. Their sentiments, and their thoughts, seemed to have been formed after one model: and how could it now be otherwise, than that every individual member should have had the welfare of the whole at heart, since

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ſince each of them, in his reſpective ſituation, enjoyed the advantage of the general predominance of the Order, and even might always flatter himſelf with the hopes of being continually further advanced in the Order itſelf?

One obſtacle alone, which prevented the Jeſuits from exerciſing an univerſal dominion over all the world, or at leaſt throughout all Europe, occurred in thoſe countries and ſtates which, ſince the time of Luther, had renounced their obedience to the authority of Rome, and all the religious Orders and Societies in connexion with the Holy See. Although the Order either contrived, in places where its members had no acceſs in their uſual appearance, to ſend perſons with feigned names, in different characters and dreſſes, or elſe to procure themſelves friends, by means of money, or the promiſe of ſome other advantage, without regarding the religion or rank of thoſe whom they employed to promote their intereſt; yet, notwithſtanding this, they found it very difficult, in moſt of the Proteſtant countries, to put their deſigns in immediate execution. Upon the whole, nothing was ſo totally oppoſite to the ſyſtem of the Order as the Proteſtant religion, not merely on account of its total deviation from the Papal Hierarchy, but on account of the freedom and enlightened ideas which prevailed in the writings of the Proteſtants, in their univerſities, and in their ſchools.

For this reaſon, of all the labours of the whole Society, and of every individual member of it, none was

was so general and so zealous as their attempt to remove this obstacle, or else to lessen it as much as possible, and thereby supply what appeared to be deficient in their general sphere of action, and, where there was a possibility, to complete it. With this design, no doctrines were so zealously urged in the schools, the pulpits, confessionals, and writings, of the Jesuits, as those of the Unity of the Church, the damnation of every human being who was not a Roman Catholic, and the crime of Heresy. Nothing was painted in such hideous colours as the doctrines of Luther. No method was neglected to instil into the minds of every Catholic, in his earliest years, a real hatred and abhorrence of the Protestants, and, where it was possible, the most violent spirit of persecution (*a*). By such measures as these, their design was in a great degree accomplished; for after that period, if a person had been once a Catholic, and received a Jesuitical education, it was no longer an easy matter for him to embrace the Protestant faith. CHAP. IX.

(*a*) In the Letter of a Layman, already frequently mentioned, p. 10, the following passage is introduced from a Jesuitical writing: Paul Windeck, *De exstirpandis Hæreticis*, Antith. II. "Lutherani mortis supplicio exterminandi, interficiendi, propulsandi, reprimendi, delendi, ustionibus, et sectionibus exscindendi, tollendi, explodendi, viriliter exstirpandi, trucidandi, internecione delendi:" to which is added the following expression, which does the highest honour to the sentiments of this honest Catholic layman: "God protect his Church from such a love for one's neighbour as this, and from apostles who entertain such villanous sentiments!"

An idea occurred to them now of attempting to bring back revolted Proteſtants into the boſom of the Catholic Church. For this purpoſe, they adopted every method where there appeared only a poſſibility of gaining acceſs to Proteſtant Monarchs and Sovereign Princes. They endeavoured to urge the validity of the argument, that as even upon Proteſtant principles the Catholics were not denied a poſſibility of ſalvation, but on the contrary the Proteſtants were by the Catholics, it was therefore ſafer to adopt the Catholic faith, and—unite themſelves with thoſe who imagine it conſiſtent with the ſpirit of the religion of Chriſt, which inculcates nothing ſo much as univerſal benevolence, to condemn, hate, and perſecute all who are not in the communion of their Church! The grand object of their labours was, not only to prevent the further progreſs of the reformation in Germany, but, where it was poſſible, to bring whole countries back again by a counter-reformation to their communion. What I have here ſaid, may afford a key to the whole of the following hiſtory. But before I proceed to purſue the thread of it, I muſt recur to a variety of other circumſtances which render the reign of Charles V, particularly with reſpect to the Germanic conſtitution as it ſtill exiſts, one of the moſt memorable periods.

CHAPTER

CHAPTER X.

Other Changes in the Affairs of the Empire, during the Reign of Charles V.

New ſtatutes of the Imperial Chamber in 1548, and promulgated again in 1555—Annual viſitation of the Chamber, and the REVISION in connexion with it—Renewal of the Public Peace —Improvement in the conſtitution of the Circles, by the Diets and ſummoning Princes—Imperial ſtatute of execution—Matricula of the Chamber and of the Empire—The latter according to the ſo denominated Roman months—and ſince the year 1543, by levying a tax upon the Provincial States—Eſtabliſhment of the preſent conſtitution of the Free Nobility of the Empire—Regulation of coinage—Laws relating to capital offences—Regulation of the police of the Empire—Treaties with Lorraine and Burgundy concerning their connexion with the Empire.

ONE of the moſt important parts of the conſtitution of Germany, which was newly regulated in the reign of Charles V, and on which the ſtate of religion had conſiderable influence, related to the Imperial Chamber, eſtabliſhed in the reign of his predeceſſor. At the firſt Diet, which Charles ſummoned at Worms in 1521, various new ſtatutes were made for it; but the Emperor afterwards cauſed an entirely new legiſlation to be formed, by a commiſſion given to two Aſſeſſors of the Chamber, Doctor Braun and Doctor Viſch. Theſe two men drew up a ſet of ſtatutes for the Chamber, in three parts; the firſt of which concerned the form of

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of the tribunal, the second its jurisdiction, and the third its proceedings; a work which might, in those days, be considered as a masterpiece of its kind, and even to the present day, upon the whole, has not only preserved its worth as a law of the Empire, which serves as a rule for the Chamber, but as a source for almost all the legal proceedings which have since followed in the different countries of Germany; and it has still its legal force as common law in such cases where there are no particular statutes of the Empire.

At the Diet which Charles held, with almost unlimited power, at Augsburg, in the year 1547, after the battle of Mühlberg, he ordered the statutes for the Chamber to be laid before the Diet, and to be promulgated in the year 1548, by means of the press. By virtue of the Religious Treaty of the year 1532, Protestant Counsellors were not to be excluded from the Chamber; but it was now determined, that there should be none but Catholics. The treaty of Passau, however, in 1552, and the Religious Peace of 1555, gave the affairs of the Chamber a different turn, and occasioned the above-mentioned article in the statutes to be altered, "That the Judge and Assessors, as well as all other "persons belonging to the Chamber, should be pre-"sented and appointed, both from the old religion, "and the Augsburg Confession; and that on that "account no exception should be made." Upon which, all the statutes were republished in the year 1555, with this alteration.

After this period, the Chamber, notwithſtanding its repeated interruptions, roſe to a flouriſhing ſtate. Among other things it was ſettled, that there ſhould be an annual viſitation of the Court; for which purpoſe a Commiſſary was appointed by the Emperor, and beſides the Elector of Mentz, another Elector, an eccleſiaſtical Prince, a ſecular Prince, a Prelate, a Count, and an Imperial city, were appointed, in the order in which they took their ſeats at the Diet, to delegate Counſellors to execute the buſineſs. Theſe Counſellors repaired, at the beginning of the month of May, to the place where the court was held, and not only began the neceſſary inquiries into the ſtate of the Chamber, with reſpect to any real or perſonal defects which might have ariſen, to remedy them as they thought proper, or make a report of their proceedings to the Emperor and Empire; but they were impowered likewiſe to grant a new trial in particular cauſes which the Chamber had already decided, provided the parties applied for a reviſion, with a due obſervance of the forms preſcribed by the Court. Thus parties, if they thought themſelves aggrieved by the ſentence of the Chamber, could recover juſtice as well as the Chamber itſelf, when it was unjuſtly accuſed. By the ſame means proviſion was made for the perpetual inſpection of the Chamber, and for every improvement which time and circumſtances might render neceſſary; and it may be aſſerted, with reaſon, that as long as this inſtitution of the annual and regular viſitation of the

 Chamber

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Chamber was legally continued, that Court was never in a more flourishing condition.

Considering the near relation which the Chamber and the Public Peace bore to each other, it was consistent for Charles V, when he promulgated the statutes of the Imperial Chamber, to give new orders again respecting the Public Peace. Neither was this done without several additions; particularly "that no one should enter into any forbidden "conspiracy, or form any alliance against others; that "the Imperial Chamber was vested with full powers "to preserve the Public Peace according to definitive rules; and that those who were suspected of "breaking the peace, or privately aiding and abetting others who had broken it, should be prosecuted "with the utmost rigour of the law."

The Imperial Chamber, as well as the Public Peace, met with a considerable support from the division of the Empire into Circles, which had already taken place during the reign of the Emperor Maximilian, but was now first properly established. This circumstance merits particular observation, as both these institutions lost a support, which they had hitherto found of infinite service, by the dissolution of the Swabian League.

As it appeared, at the commencement of the reign of Charles V, that all the Circles had not elected their

their Colonels *, in compliance with the orders issued by Maximilian I, the Council of Regency, in 1522, sent an order, in the Emperor's name, which was intended for all the States, to the first Prince in rank of every Circle, or where there were ecclesiastical and secular Princes who disputed the priority of rank, as in the six ancient Circles, to the two first Princes of the spiritual and secular benches, with a commission to treat on the subject with the other members of the Circle. The Recess of 1530, Art. CIII, says, "The Superiors of each "Circle shall convene the other members." Thus, Diets were gradually established in particular Circles; and those Princes who at first obtained the commission only on that occasion, imperceptibly obtained a perpetual precedency as the Princes who had hitherto convoked the Diets of the Circles in the Recesses of 1542 and 1544, or as SUMMONING PRINCES †; an expression which was afterwards used, and first occurs in the Recess of 1555, Art. LVII.

This office, of convoking the Diets of the Circles, has, since that time, not merely been confined to summoning the Diet, or sending circular letters to the other States; but in most Circles it included the direction of the Diet itself, as well as of all the affairs of the Circles; and at last the office of Colonel was almost entirely neglected, or else the advantages attending

* KREISOBERSTEN.

† REICHSAUSCHREIBENDE FÜRSTEN.

tending it have been united with the other office; so that at present the prerogatives of the summoning Princes are the most important of any which an individual State can enjoy over the others. In each of the four new Circles there is only one summoning Prince; as in Austria and Burgundy, only the House of Austria; in the Electoral Circle of the Rhine, only the Elector of Mentz; and in Upper Saxony, the Elector of Saxony. In the six ancient Circles, where the first States were originally only spiritual and secular Princes, one spiritual and one secular Prince hold the office of summoning the Diets, as Bamberg and Anspach in Franconia, Salzburg and the Bavarian House in Bavaria, Constance and Wurtenberg in Swabia, Worms and Palatinate Simmern in the Circle of the Upper Rhine, Munster and Juliers in Westphalia, Magdeburg, Bremen, and Brunswick-Luneburg in Lower Saxony.

The most important change which took place in the constitution of the Circles themselves, was occasioned by the troubles which the Margrave Albert of Brandenburg Culmbach excited, by refusing to accede to the treaty of Passau, and continuing the following year in arms, by which several of the Circles were thrown into great commotion. This induced the Electoral Circle of the Rhine, Franconia, Swabia, and the Circle of the Upper Rhine, in August 1554, to form a project for a closer connexion, and internal military regulations. This project was ratified by all the ten Circles, in November 1554;

and

and hence arofe the IMPERIAL ORDER OF EXECUTION, as it is called, which was afterwards inferted in the Recefs of 1555. By virtue of this order, every State of the Empire was directed to hold himfelf prepared to afford the neceffary aid, in conjunction with all the other members, under the command of the Colonel of the Circle, in cafe any difturbance fhould arife, or oppofition be made to the decrees of the Imperial Chamber; and if the power of one fhould not be fufficient, all the other Circles were ordered to unite at laft with their refpective forces.

During the reign of Charles V, the inftitution of the Circles was ftill further employed, for the maintenance of the Chamber; as a perpetual tax was impofed upon all the States of the Empire, according to their divifion into the ten Circles. With the other contributions of men and money, which were demanded in the name of the Empire, to carry on a war, or in the time of peace, another inftitution arofe during this reign, the origin of which was merely accidental. Immediately at the firft Diet which Charles convoked at Worms, a certain number of horfe and foot foldiers were granted, on account of an expedition which the Emperor had then in contemplation, to Rome; and for this purpofe a lift was drawn up of the States, or, as it is termed, the MATRICULA of the Empire, in which it was exactly ftated how many horfe and how many foot foldiers each State fhould fupply. Every Electorate, for inftance, was rated at fixty horfe and two hundred and feventy-

ſeventy-ſeven foot ſoldiers, except Bohemia, whoſe contingent was four hundred horſe and ſix hundred foot; and the ſpiritual and ſecular Princes, Prelates, Counts, and Imperial cities, in proportion; though the contingents of Lorraine, Heſſe, Wurtenberg, Holſtein, and ſome other countries, were equal to thoſe of the Electors. Bavaria, Auſtria, Burgundy, and Brunſwick-Luneburg, were rated higher likewiſe, and others lower.

The journey to Rome, which was then in agitation, did not take place; but in the year 1535, when application was made to the Empire for aid to carry on the ſiege of the city of Munſter, which was then in the poſſeſſion of the Anabaptiſts, the Receſs of 1535 decreed, that every State ſhould contribute the whole contingent for the Roman expedition, as it was granted at the Diet of Worms in 1521, as far as the quota of money for one month extended, and the addition of a quarter of a month beſides. In the ſame manner afterwards, in the year 1541, half the quota of money for three months was granted, to provide for immediate aid againſt the Turks, and a fourth in caſe of neceſſity; when each month was computed at twelve florins for a horſe ſoldier, and four for every private in the infantry.

Hence aroſe a ſort of national impoſt, which has been continued ever ſince; that is, as often as the Diet thinks proper, a certain number of Roman months, as they are termed, are granted, according

to

to the ſtandard of the Matricula of the year 1521, that every State muſt pay ſo many times twelve or four florins for a Roman month, according to his rate of horſe or foot ſoldiers in the Matricula of the Empire. But as the Matricula of the year 1521 was by no means made with the deſign of perpetually fixing any certain aſſeſſment; and as, ſince that period, ſeveral States have undergone a very material alteration in the ſtate of their finances; it was very natural for many of them to apply for an abatement of their quotas, as they were rated in the book of matriculation; which ſome of them obtained. This national impoſt, however, has never yet been perfectly eſtabliſhed: neither are the Roman months a perpetual tax, like the CHAMBER TERMS; becauſe they can never be levied without the conſent of the Diet, which in the time of peace is at preſent not ſo frequently granted, and not without ſome difficulty even in the time of war.

The firſt difficulties preſented themſelves already in the reign of Charles V. as it was conſidered the duty of every State of the Empire to pay the taxes granted by the Diet from his own domains, without any contribution from the States of his country; but in the Receſs of 1543, an order was made for an aſſeſſment on the latter, which gradually laid the baſis in the different countries of a total alteration in the mode of taxation.

In former times no territorial Lord had any pecuniary contribution to expect from his ſubjects, except what

BOOK V. what was granted at his particular requeſt by his provincial States. Wherever this was any where already become a permanent tax, it was but of little import, and only levied on the property of the burghers and peaſants. The Nobility in general contributed nothing from their own private eſtates, which were originally free. Prelates likewiſe and Cities were exempt from taxation. Since the latter part of the fifteenth century, the change of circumſtances in the mode of making war, the manner of living at courts, and ſupport of civil officers, occaſioned many of the Princes to involve themſelves in debts, which the provincial States in a great meaſure took upon themſelves, with the reſervation of exemption from taxes; a privilege which was claimed by right of cuſtom, for the private eſtates of the Prelates and Nobility, and in conſequence of the expreſs aſſurance of the Sovereign, that he would conſider the land-tax only as an act of free will, and not of duty. In the Receſs of 1543, it was firſt made an obligation, by a privilege being allowed to every government to raiſe the two Roman months then granted, by levying a tax upon their ſubjects. This was ſoon afterwards repeated on ſeveral occaſions; and therefore every State of the Empire is now conſtitutionally entitled to raiſe the taxes granted at the Imperial Diet, by levying a tax on the States of his country.

A conſiderable deficiency aroſe in the taxes of the Empire, by that part of the German Nobility who acknowledged no territorial ſovereignty over themſelves, and

and had asserted their immediate dependence on the Empire during the troubles in the thirteenth century, pretending, in cases where they were required to contribute to the expences of a war of the Empire, that they discharged their obligation by personal service, and were subject, therefore, to no new burden whatever. The immediate Nobility of the Empire were neither included in its division into ten Circles, nor in the Matricula of the year 1521. Charles V, however, first introduced the custom of their paying, at different times, a sort of voluntary present, or CHARITABLE SUBSIDY, as it is termed, to the Emperor, though upon the reciprocal assurance, that it was not a matter of obligation. Their constitution was at the same time newly established; for at the dissolution of the Swabian League, the Nobility of that country, who were already divided into four parts, as a member of that league, in the year 1543 formed a new confederacy, and in 1545 added the quarter of Creichgau; upon which the further union of the Free Nobility of Swabia (*a*), as well as those of Franconia and the Rhine, afterwards followed, and was confirmed by letters patent granted by the Emperor (*b*).

Besides

(*a*) The immediate Nobility of Swabia appointed their own council and civil officers so early as the year 1559; but their present constitution was first settled by a new agreement which they made on the 5th of August, 1560, at Munderkingen, which was afterwards ratified by the Emperor Ferdinand I. June 30, 1562.

(*b*) The regulations of the immediate Nobility of Swabia were settled September 3, 1590, and ratified by the Emperor Rudolphus

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Beſides this, Charles V. was of ſervice to the Germanic conſtitution, by various acts of legiſlation, ſuch as regulating the ſtandard of coin, in the year 1524, which ſtill, however, continued very imperfect; by ſtatutes for criminal judicature, in 1532, which were brought into general uſe; and by ſtatutes for the regulation of the police of the Empire, in 1548.

Theſe were at firſt but rude, and formed from rough materials (*a*); but they paved the way for more exact regulations of the police of ſeveral countries, and introduced many regulations, which were of the greateſt utility to all Germany.

At

dolphus II. September 29, 1591; thoſe of the immediate Nobility of the Rhine were ſettled in 1652, and ratified by the Emperor Leopold in 1662. General privileges were granted by the Emperor to the immediate Nobility, particularly in the years 1605, 1609, 1717.

(*a*) The following deſcription, given of the Diet held at Worms in the year 1521, may ſerve as a proof of the ſtate of the police, in the very place where the Emperor and Empire were aſſembled in the reign of Charles V. "At Worms," the author writes, "it is ſcarcely ſafe to go out in the night time. A night "ſeldom paſſes without three or four perſons being murdered. "The Emperor has a Provoſt with him, who has drowned, "hanged, and murdered, upwards of an hundred people. Every "thing here is in the Roman ſtyle; murders, robberies, and the "ſtreets crowded with fine women. Faſts are no longer heard "of; and every thing repreſents the hill of my Lady Venus. "I muſt tell you too, that many of the Princes and foreigners "have drank themſelves to death with ſtrong wines."

Goldast's Political Concerns of the Empire, p. 940.
Möser's Public Law of Germany, Part I. p. 159, § 2.

At laſt, during this reign, the dubious connexion which had hitherto ſubſiſted between the Germanic Empire and the Dutchies of Upper and Lower Lorraine, was ſettled on a permanent footing. In the year 1542 Charles made a treaty with the Duke of Lorraine, by virtue of which that Prince promiſed to continue to hold the Margraviates of Nomeny and Pontamouſſon, and ſome other countries then mentioned, as fiefs of the Empire, and to contribute two thirds of what an Elector paid as contingencies. In other reſpects, Lorraine was declared to be a free Dutchy, and no longer incorporated with the Germanic Empire; and from this period, the Houſe of Lorraine has not been in poſſeſſion of either a ſeat or voice in the College of the Princes, under the title of Marquis of Nomeny.

The name of the ancient Dutchy of Lower Lorraine, has been long almoſt wholly buried in oblivion, as its poſſeſſors at preſent ſign themſelves only Dukes of Brabant; and the countries belonging to that Dutchy, ever ſince they devolved to the Houſe of Burgundy, have generally been called only by that name, as the Emperor Maximilian, when he divided the Empire into ten Circles, called them the Circle of Burgundy. The real connexion however of that country with the Germanic Empire, remained undetermined till Charles V. made a treaty with the Empire, at the Diets which he held at Augſburg, in the years 1547 and 1548, reſpecting

BOOK V. these countries of the Netherlands; that they should undoubtedly enjoy the protection the Empire; but that their assessment should be as much again as that of the Electors, and be subject, as far as respected the payment of their quota, to the Emperor's jurisdiction; although in other respects they should be totally free from it.

END OF THE FIRST VOLUME.